



## CITY COUNCIL

Civic Center • 500 East Third Street, Suite 330 • Loveland, CO 80537  
(970) 962-2303 • Fax (970) 962-2900 • TDD (970) 962-2620  
[www.cityofloveland.org](http://www.cityofloveland.org)

### PROCLAMATION

**WHEREAS**, the citizens of Loveland stand firmly committed to promoting reading as the catalyst for our children's future academic success, their preparation for America's jobs of the future, and their ability to compete in a global economy; and

**WHEREAS**, the Loveland City Council has provided significant leadership in the area of community involvement in the education of our youth, grounded in the principle that educational investment is key to the community's well being and long-term quality of life; and

**WHEREAS**, "NEA's Read Across America," a national celebration of Dr. Seuss's 108th birthday on March 2, 2012, promotes reading and adult involvement in the education of our community's children;

**NOW, THEREFORE**, we, the City Council of Loveland call on the citizens of Loveland to assure that every child is in a safe place reading together with a caring adult on **March 7, 2012**;

**AND BE IT FURTHER RESOLVED** that this Council enthusiastically endorses "**NEA's Read Across America**" and recommits our community to engage in programs and activities to make America's children the best readers in the world.

Signed this 6th day of March, 2012

Cecil A. Gutierrez  
Mayor



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Recycled Paper



**CITY OF LOVELAND**  
CITY MANAGER'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

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**AGENDA ITEM:** 1  
**MEETING DATE:** 3/6/2012  
**TO:** City Council  
**FROM:** Bill Cahill, City Manager  
**PRESENTER:** Bill Cahill

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**TITLE:**

Recommendations for Board and Commission Appointments

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt a motion to appoint Ted Schlagenhauf as an alternate member to the Affordable Housing Commission for a term effective until June 30, 2012.

Adopt a motion appointing to the Senior Advisory Board: Phoebe Hawley as representative for McKee Medical Center Seasons Club for a term effective until March 6, 2014, and appointing Doris Helwig as the at large member representing Senior Singles for a term effective until March 6, 2014.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action

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**DESCRIPTION:**

This is an administrative item recommending appointments to the Affordable Housing Commission and Senior Advisory Commission.

**BUDGET IMPACT:**

Positive  
 Negative  
 Neutral or negligible

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**SUMMARY:**

During the late, 2011 bi-annual recruiting, three applications were received for Affordable Housing Commission. Interviews were held December 9, 2011 with all three candidates. Two applicants were appointed to the commission with Council's unanimous approval on December 20, 2011.

The third applicant, Ted Schlagenhauf , is now recommended for appointment as an Alternate member with a term effective until June 30, 2012.

Per Section 2.60.040 of the Loveland Municipal Code:

"There is established a senior advisory board consisting of fifteen members. Nine members shall be appointed by the city council to serve terms of three years. Six members shall be nominated by the senior advisory board, and approved by the city council, to serve terms of two years. These six members shall consist of one at large member, and one member from each of the following organizations: Chilson Senior Advisory Committee, Housing Authority of the City of Loveland, Colorado, McKee Senior Services, the Poudre Valley Hospital Aspen Club, and the McKee Medical Center Seasons Club."

At the February 1, 2012 meeting, the Senior Advisory Board nominated Doris Helwig as the at large member representing Senior Singles and Phoebe Hawley as representative for McKee Medical Center Seasons Club. If these recommendations are approved, each person will serve a two year term effective until March 6, 2014.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

None



## CITY OF LOVELAND

### FIRE & RESCUE DEPARTMENT

Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537

(970) 962-2471 • FAX (970) 962-2922 • TDD (970) 962-2620

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#### AGENDA ITEM:

**2**

#### MEETING DATE:

3/6/2012

#### TO:

City Council

#### FROM:

Randy Mirowski, Fire & Rescue Department

#### PRESENTER:

Randy Mirowski

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#### TITLE:

An ordinance on second reading enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for the replacement of self-contained breathing apparatus (SCBA) and automated external defibrillators (AED) from a Federal Assistance to Firefighters Grant (AFG)

#### RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second reading.

#### OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

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#### DESCRIPTION:

This is an administrative action. The ordinance appropriates funds from a federal grant and the local match for the replacement of breathing apparatus and defibrillating equipment. Staff is recommending the adoption of the ordinance to allow the department to take advantage of the tremendous cost savings and the leveraging of available dollars for the purchase of critically needed safety equipment.

#### BUDGET IMPACT:

Positive  
 Negative  
 Neutral or negligible

The local match uses \$111,890 in City reserves to match \$447,940 in grant revenue from Federal Emergency Management Agency (FEMA) Assistance to Firefighters Grant (AFG). A reserve in the amount of \$434,690 is in the 2012 Financial Plan included as part of the 2012 Budget for the replacement of this equipment. By obtaining the grant, \$322,800 from this reserve is now available for other uses, including a match for another potential AFG award that is still under consideration by FEMA.

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**SUMMARY:**

SCBAs are a device worn by rescue workers, firefighters, and others to provide breathable air in an IDLH (Immediate Danger to Life and Health) atmosphere. The term "self-contained" means that the breathing set is not dependent on a remote supply (e.g., through a long hose). An AED is a portable electronic device that automatically diagnoses the potentially life threatening cardiac arrhythmias of ventricular fibrillation and ventricular tachycardia in a patient, and is able to treat them through defibrillation, the application of electrical therapy which stops the arrhythmia, allowing the heart to reestablish an effective rhythm. Both of these tools represent critical life safety devices that protect firefighters and citizens alike.

For several years, Loveland Fire and Rescue Authority (LFRA) have had numerous unfunded priorities for safety equipment and various tools. Grants, such as the AFG award, have been identified as a potential, alternate funding source to address these unfunded priorities. Both the fleet of SCBAs within the department and the AEDs, which are carried on all of our front line fire apparatus, are two of the unfunded priorities that were awarded for replacement or refurbishment in the 2011 grant from FEMA to LFRA.

Most of the fleet of the AED unit's carried by LFRA are more than twelve years old and were in need of replacement. The SCBA fleet has approximately 110 units total in the department's cache. Of these, more than 60% were at an age where they were unable to be refurbished (or rebuilt) and needed total replacement. Approximately 30% of the fleet of the SCBA units are able to be refurbished as long as the units were refurbished prior to the end of year 2012; beyond that year, they too would need total replacement.

This award from FEMA allows for the department to upgrade and replace, or refurbish, all SCBA units within the fleet to a level that meets national standards and provides enhanced firefighter and citizen safety through better, more technically advanced air packs. The award also allows for the replacement of all of the department's aging AEDs for front line fire apparatus, and a cadre of new AEDs for replacement of some existing units in city buildings.

The fire authority staff is recommending to City Council to adopt the ordinance allowing funds to be appropriated for the matching dollars needed to meet the department's obligation for the grant award. Leveraging the city dollars and saving nearly \$450,000 dollars for capital replacement are the strongest arguments and rationale for approving this ordinance.

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REVIEWED BY CITY MANAGER:



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**LIST OF ATTACHMENTS:**

1. An ordinance enacting a supplemental budget and appropriation to the 2012 city of Loveland budget for the replacement of self-contained breathing apparatus and automated external defibrillators from a Federal Assistance to Firefighters Grant.

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**FIRST READING**

February 21, 2012

**SECOND READING**

March 6, 2012

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR THE REPLACEMENT OF SELF-CONTAINED BREATHING APPARATUS AND AUTOMATED EXTERNAL DEFIBRILLATORS FROM A FEDERAL ASSISTANCE TO FIREFIGHTERS GRANT**

**WHEREAS**, the City has received and has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2012; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2012, as authorized by Section 11-6(a) of the Loveland City Charter.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That revenues and/or reserves in the amount of \$111,890 from reserves and \$447,540 from a Federal Emergency Management Agency Assistance to Firefighters Grant in the Risk and Insurance Fund 502 and General Fund 100, respectively, are available for appropriation. Revenues in the total amount of \$559,430 are hereby appropriated for the replacement of self-contained breathing apparatus (SCBA) and automated external defibrillators (AED) and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget**  
**Genreal Fund 100 - Assistance to Firefighter Grant**

**Revenues**

Fund Balance	110,920
100-22-225-1607-32000-FRAFG12 Federal Grant	33,980
100-22-226-1644-32000-FRAFG12 Federal Grant	409,670
<b>Total Revenue</b>	<b>554,570</b>

**Appropriations**

100-22-225-1607-42097-FRAFG12 Safety Supplies	36,740
100-22-225-1607-43569-FRAFG12 Repair and Maintenance	5,740
100-22-226-1644-42097-FRAFG12 Safety Supplies	141,160
100-22-226-1644-43450-FRAFG12 Professional Services	1,000
100-22-226-1644-49399-FRAFG12 Other Capital	369,930

<b>Total Appropriations</b>	<b>554,570</b>
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**Supplemental Budget**  
**Risk & Insurance Fund 502 -Assistance to Firefighter Grant**

**Revenues**

Fund Balance	970
502-17-177-0112-32000-FRAFG12 Federal Grant	3,890
<b>Total Revenue</b>	<b>4,860</b>

**Appropriations**

502-17-177-0112-42097-FRAFG12 Safety Supplies	3,900
502-17-177-0112-43569-FRAFG12 Repair and Maintenance	960
<b>Total Appropriations</b>	<b>4,860</b>

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

ADOPTED this 6<sup>th</sup> day of March, 2012.

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Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt  
Deputy City Attorney




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<b>AGENDA ITEM:</b>	<b>3</b>
<b>MEETING DATE:</b>	3/6/2012
<b>TO:</b>	City Council
<b>FROM:</b>	Luke Hecker, Chief of Police
<b>PRESENTER:</b>	Luke Hecker

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**TITLE:**

- a) Consideration on second reading of an ordinance repealing and reenacting Chapter 5.28 of the Loveland Municipal Code regarding pawnbrokers to license and regulate pawnbrokers and pawnbroker operations
- b) Consideration of a resolution amending the 2012 schedule of rates, charges and fees for City Clerk services provided by the City of Loveland, Colorado to include licensing of pawnbrokers

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the ordinance on second reading and approve the resolution.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

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**DESCRIPTION:**

There are two items; one is legislative and one is administrative. a) Adoption of the Ordinance is a legislative matter that would make it unlawful for any person to engage in pawn brokering in the City of Loveland except as provided in and authorized by this chapter and without first having obtained a license from the city clerk. b) Adoption of the resolution is an administrative matter that will amend the rates, charges and fees for services provided by the City of Loveland in 2012 to include pawnbroker licensing fees. On February 21, 2012, City Council approved the first reading of the ordinance unanimously.

**BUDGET IMPACT:**

Positive  
 Negative  
 Neutral or negligible

Pawnbroker licensing fees were not anticipated at the time the budget was approved.

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**SUMMARY:**

During the City Council Study Session on January 10<sup>th</sup>, 2011, Council considered governance models for pawnbroker operations and directed city staff to craft an ordinance requiring the licensing of pawnbrokers operating within the City of Loveland. Adoption of this ordinance would require all applicants for a pawnbroker's license, or manager's certificate, to file an application for a license or certificate with the city clerk; demonstrate compliance with State requirements for operating a business in good standing; pay a required application and license fees as established by the City Council; and furnish a bond from a responsible surety, to be approved by the City Clerk, in the amount of five thousand dollars (\$5,000.00); and comply with other regulations as provided in Chapter 5.28.

Since First Reading on February 21, 2012, the ordinance has been modified to include a legal avenue for transferability of licensed pawnbroker businesses. The ordinance has also been modified to permit a pawnbroker holding a City Sales Tax license prior to February 21, 2012, to relocate the pawnbroker business one time to a new location without being subjected to the requirement of a one-mile separation between pawnbroker businesses.

Adoption of the resolution would amend the rates, charges and fees for services provided by the City for calendar year 2012 in Resolution #R-62-2011, to include in the City Clerk schedule of rates, charges and fees for 2012, pawnbroker application and licensing fees as follows:

**Application fees (Non Refundable):**

- New license \$400;
- Renewal \$100;
- Criminal investigation process (separate check for actual cost);
- Manager Certificate \$100 (renewed every 3 years);
- Transfer License: \$400.00
- Section 5.28.220 Business Relocation Application Fee: \$225.00 (only available to pawnbroker businesses that hold a City of Loveland Sales Tax license prior to February 21, 2012)

**License fees: (in the event an application is denied, this fee would be refunded)**

- Pawnshop license \$100.

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**REVIEWED BY CITY MANAGER:**

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**LIST OF ATTACHMENTS:**

Red-lined Ordinance

Ordinance

Resolution

First Reading: February 21, 2012

Second Reading: March 6, 2012

**ORDINANCE No. \_\_\_\_\_**

**AN ORDINANCE REPEALING AND REENACTING CHAPTER 5.28 OF  
THE LOVELAND MUNICIPAL CODE REGARDING PAWBROKERS  
TO LICENSE AND REGULATE PAWBROKERS AND PAWBROKER  
OPERATIONS**

**WHEREAS**, pursuant to Chapter 5.28 of the City Code, the City of Loveland's current pawnbroker regulations are limited to the hours of operation; and

**WHEREAS**, various pawnbrokers within the City have requested that the City adopt a licensing process to ensure the integrity and reputable business practices of current and future pawnbrokers operating within the City; and

**WHEREAS**, City Council reviewed the pawnbrokers' licensing request and other regulatory alternatives at the January 10, 2012 City Council study session; and

**WHEREAS**, the City Council finds that an ordinance to license and regulate pawnbrokers and pawnbroker operations would benefit the health, safety and welfare of the City's residents and, therefore, is in the City's best interest.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE  
CITY OF LOVELAND, COLORADO:**

**Section 1.** That Chapter 5.28 of the Loveland Municipal Code is repealed and reenacted to read in full as follows:

**Chapter 5.28  
Pawnbrokers**

**5.28.010      Definitions.**

The following words, terms and phrases, when used in this chapter, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Applicant* shall mean the individual, partnership, limited liability company, corporation, or other business entity that seeks a pawnshop license to be held in its name.

*Contract for purchase* shall mean a contract entered into between a pawnbroker and a customer pursuant to which money is advanced to the customer by the pawnbroker on the delivery of tangible personal property by the customer on the condition that the customer, for a fixed price and within a fixed period of time, to be no less than thirty (30) days, has the option to cancel the contract.

*Chief of Police* shall mean the duly appointed City of Loveland Chief of Police, or his or her designee.

*City Clerk* shall mean the duly appointed City of Loveland City Clerk, or his or her designee.

*Customer* shall mean a person who delivers personal property into the possession of a pawnbroker for the purpose of entering into a contract for purchase or a purchase transaction.

*Fixed period of time* shall mean that period of time, to be no less than thirty (30) days, set forth in a contract for purchase within which the customer has the option to cancel the contract.

*Fixed price* shall mean the amount agreed upon to cancel a contract for purchase during the option period. Said fixed price shall not exceed one-fifth (1/5) of the original purchase price for each month plus the original purchase price.

*License* shall mean any document or permit issued by the city which authorizes an individual, partnership, limited liability company, corporation, or other business entity to conduct pawnbrokering activities within the city.

*Manager* shall mean an individual employed by a pawnbroker who is designated as manager or whose duties entail the exercise of discretion and independent judgment in the administration of the affairs of a pawnbroker's business and the supervision of other employees, as well as the making of loans, the execution of any documents required to be prepared pursuant to this chapter and/or the purchasing of goods or property on behalf of the business.

*Manager's certificate* shall mean the document issued by the city which authorizes an individual to perform his or her duties as manager for the pawnbroker.

*Option* shall mean the fixed period of time and the fixed price agreed upon by the customer and the pawnbroker in which a contract for purchase may be, but does not have to be, rescinded by the customer.

*Owner* shall mean a person, other than a pawnbroker, who claims to be vested with the legal or rightful title to certain tangible personal property.

*Pawnbroker* shall mean a person regularly engaged in the business of making contracts for purchase or purchase transactions in the course said business. The term does not include "secondhand dealers" as defined in and regulated by C.R.S. Sections 18-13-114 through 18-13-118, ~~C.R.S.~~ *Pawnbroker* shall also include, without limitation, all owners, managers or employees of a pawnbroker business required to be licensed by the city whose regular duties include making contracts for purchase, purchase transactions or executing any documents required to be prepared pursuant to this chapter.

*Pawnbrokering* shall mean the business of a pawnbroker as defined by this section.

*Peace officer* shall mean any undersheriff, deputy sheriff (other than one appointed with authority only to serve summonses and execute civil process), city police officer, state patrol

officer, town marshal, or investigator for a district attorney or the Attorney General, who is engaged in full-time employment by the State or a city, county, town or judicial district within this State.

*Person* shall mean any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity.

*Pledge or pledged property* shall mean any tangible personal property deposited with a pawnbroker pursuant to a contract for purchase in the course of his or her business as defined in this section.

*Pledgor* shall mean a customer who delivers a pledge into the possession of a pawnbroker.

*Purchase transaction* shall mean the purchase by a pawnbroker in the course of his or her business of tangible personal property for resale, other than newly manufactured tangible personal property which has not previously been sold at retail, when such purchase does not constitute a contract for purchase.

*State* shall mean the State of Colorado.

*Tangible personal property* shall mean all personal property other than choses in action, securities, or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of business in connection with a contract for purchase or purchase transaction.

#### **5.28.020      License required.**

It shall be unlawful for any person to engage in pawnbrokering except as provided in and authorized by this chapter and without first having obtained a license from the city clerk. Such license shall be kept current at all times, and the failure to maintain a current license shall constitute a violation of this section.

#### **5.28.030      Application.**

All applicants for a pawnbroker's license or manager's certificate shall file an application for such license or certificate with the city clerk's office on forms to be provided by the city clerk's office. Each individual, partner of a partnership, manager of a limited liability company, officer, director and holder of ten percent (10%) or more of the corporate stock of the corporate applicant or holder of ten percent (10%) or more interest in a limited liability company shall be named in each pawnbroker's license application form, and each of them shall provide a complete set of fingerprints as part of the application. In addition, each applicant shall certify that the proposed pawnbroker establishment meets the requirements of the city's municipal code and regulations and provide proof of the applicant's right to possession of the premises wherein pawnbrokering will be conducted. Each individual named in the application shall be of good moral character and each corporate applicant for a pawnbroker's license shall furnish evidence

that it is in good standing with the ~~s~~State or, in the case of a foreign corporation, evidence that it is currently authorized to do business in the ~~s~~State and in good standing.

**5.28.040 Application and License fees.**

- A. Each applicant for a pawnbroker's license, whether an individual, partnership, limited liability company or corporation, shall pay an application and license fee at the time the ~~initial~~ application is filed for a new license, transfer of license is filed or ~~at the time a renewal application is filed~~. The application fee shall be set annually by city council resolution and shall be nonrefundable. Said application fee shall be an annual fee set in an amount necessary to defray the city's actual and reasonable direct and indirect expenses of processing the pawnshop licensing application.
- B. Each applicant for a pawnbroker's license whose application is approved shall receive a license. The license fee shall be set annually by city council resolution. Said fee shall be an annual fee set in an amount necessary to defray the city's actual and reasonable direct and indirect expenses related to administration and enforcement of this chapter. The license fee shall be refunded to the applicant, if no license is granted.
- C. An issued pawnbroker's license shall be valid only for the calendar year in which it is issued. A pawnbroker's license application or license renewal application shall be valid only for the calendar year in which the associated pawnbroker's license is issued.

**5.28.050 Investigation and approval of applicants and managers required; self-reporting of violations.**

- A. No pawnbroker's license shall be issued by the city clerk until such application for a license has been investigated by the chief of police and compliance with the city's municipal code and regulations has been established. Each applicant shall submit a nonrefundable investigation and/or fingerprint and photograph fee for each individual named pursuant to Section 5.28.030 in the pawnbroker's license application at the time such application is filed in an amount not to exceed that charged by the Colorado Bureau of Investigation. Further, each applicant shall furnish sufficient documentation to prove the name, date of birth and residency of each individual named in the pawnbroker's license application, and shall provide any other information which is requested on such application.
- B. No licensee shall employ an individual as a manager, nor shall any individual accept such employment as a manager, unless such individual has been investigated and been granted a manager's certificate by the city clerk pursuant to the following:
  - 1. Prior to becoming employed as a manager by a licensee or to obtain a renewal certificate, an applicant for a manager's certificate shall provide a complete set of fingerprints as part of the application. Further, each applicant for a manager's

certificate, or renewal of such certificate, shall furnish sufficient documentation to prove the applicant's name, date of birth and residency, and shall provide any other information which is requested on the application.

2. An applicant for a manager's certificate shall pay a nonrefundable fingerprint and investigation fee in an amount not to exceed that charged by the Colorado Bureau of Investigation. If, however, the applicant can provide proof of a criminal history investigation completed by the Colorado Bureau of Investigation within the year immediately preceding the application, such individual need only submit a fingerprint card and photograph and pay the associated fee.
3. Notwithstanding subsections 1 and 2 of paragraph B of this section, any individual named pursuant to Section 5.28.030 in ~~a~~ new pawnbroker's license application that is approved may receive a manager's certificate for the premises specified in the application without cost or further investigation, but shall be subject to and shall meet all other standards and qualifications required to obtain a manager's certificate as provided in this chapter.
4. Each manager's certificate shall have clearly imprinted thereon a statement that it is valid only for the period of time specified thereon, and only in the pawn industry. A provisional certificate shall be issued by the city clerk upon filing of the application, which provisional certificate shall remain in effect during the pendency of an applicant's background investigation. Each provisional or regular manager's certificate shall be stamped with the name of the pawnbroker and business location(s) for which it is valid. A regular certificate issued shall be for a maximum period of three (3) years; and such certificate shall automatically expire: (i) upon a change of employment by the certificate holder, unless renewed within ten (10) days thereafter, or (ii) if the certificate holder is not employed in the pawn industry within the city for a period of ninety (90) days or more. A manager's certificate which has expired may be renewed by the application process described above.
5. A manager's certificate may be revoked when the certificate holder has been determined by the city clerk to be in violation of any of the provisions of this chapter.

C. It shall be unlawful for any person to make a false statement upon an application for a pawnbroker license and/or application for a manager's certificate.

D. No pawnbroker license or manager's certificate shall be renewed or issued to the following persons under the provisions of this chapter:

1. Subject to the provisions contained in C.R.S. Section 24-5-101, ~~C.R.S.~~, a person who has been convicted of: any felony of this State or any crime elsewhere which under the laws of this State would be a felony; any crime of which fraud or intent to defraud was an element, whether in this State or elsewhere; any crime of embezzlement or larceny in this State or elsewhere against an employer or business; or any criminal or civil violation in this State or elsewhere related to any law or ordinance pertaining to the pawn industry;
2. Any individual under the age of eighteen (18); or

3. Any person who has made a false, misleading or fraudulent statement on his or her application for a pawnbroker's license or a manager's certificate.
- E. Any applicant holding a pawnbroker's license, individual named pursuant to Section 5.28.030 in a pawnbroker's license application, or individual holding a manager's certificate pursuant to this chapter who is convicted of any violation set forth in subsection 1 of paragraph DE of this section subsequent to the issuance of such license or certificate shall report such conviction to the city clerk's office within five (5) business days of the conviction.
- F. Notwithstanding subsection 1 of paragraph D of this section, a pawnbroker's license or manager's certificate may be issued, renewed or retained where the sole basis for a denial or revocation of such license or certificate is a conviction for a criminal or civil violation related to any law or ordinance pertaining to the pawn industry and where the applicant demonstrates to the city clerk satisfactory evidence of rehabilitation, especially evidence pertaining to the period of time between the applicant's conviction that serves as the basis for the denial and the consideration of the application for such license or certificate.
- G. No employee under eighteen (18) years of age shall make loans, purchase any goods or property on behalf of the business or execute any document required to be prepared pursuant to this chapter, unless such employee is under the direct supervision of a manager holding a valid manager certificate who is physically present on the licensed premises.
- H. Within forty-five (45) days of receipt of an application for a new license, for a transfer of ownership, or to renew a license, the city clerk shall issue, transfer or renew such license, provided that compliance with the city's municipal code and regulations has been established and the chief of police, after investigation, has made a recommendation regarding whether or not the applicant will operate or has operated the business in such a manner as to fully comply with the requirements and purposes of this chapter and is of good moral character. Such recommendation shall be made within thirty (30) days of receipt of said application from the city clerk's office.
- I. A license shall be limited to use at the premises specified in the application. Such license shall not be transferable to a premises at a different location except as expressly provided in paragraph A of Section 5.28.220-A.

#### **5.28.055 Transferability.**

- A. No license issued under this chapter shall be transferred except as provided in this section.
- B. No later than thirty (30) days after any transfer of a ten percent (10%) or more ownership interest in a pawnbroker business licensed under this chapter, whether the transfer is voluntary or involuntary (such as the result of death or by operation of

law), an application for the transfer, on a form provided by the city clerk, shall be filed with the city clerk, which application shall include any sets of fingerprints the city clerk determines are needed for the city's review of the transfer application under the provisions of this chapter. There shall also be paid to the city clerk at the time of the filing of the transfer application any transfer application fee set by the city council by resolution. The transfer application shall be reviewed in accordance with the same criteria required in Section 5.28.050 for a new license application and in accordance with all other applicable provisions of this chapter.

C. Once a completed transfer application is filed and any required fee is paid, as provided in paragraph B<sub>7</sub> of this section, the pawnbroker business that is the subject of the application may continue to operate as if licensed under this chapter for a period of forty-five (45) days provided the business operates in accordance with all other applicable requirements of this chapter. If for any reason the applicant's transfer application has not been approved within that forty-five (45) day period, any continued operation of the pawnbroker business after that period shall be considered a violation of Section 5.28.020.

**5.28.060 Manager or change of manager.**

- A. A pawnbroker may employ a manager to operate a pawnbrokering business, provided that the pawnbroker retains complete control of all aspects of the pawnbrokering business, including but not limited to the pawnbroker's right to possession of the premises, his or her responsibility for all debts and his or her risk of all loss or opportunity for profit from the business.
- B. In the event a pawnbroker changes the manager of a pawnbroker establishment, the pawnbroker shall report such change to the city clerk's office and register the new manager on forms provided by the city clerk's office within thirty (30) calendar days of such change. The new manager shall be subject to and shall meet the standards and qualifications required to obtain a manager's certificate as provided in this chapter.
- C. Failure of a pawnbroker to report such change in manager or to report the failure of the manager to meet the standards and qualifications as required in this chapter to obtain a manager's certificate, may be grounds for termination of the license.

**5.28.070 Surety bond required.**

- A. Every applicant for a pawnbroker's license shall furnish a bond from a responsible surety, to be approved by the city clerk, in the amount of five thousand dollars (\$5,000.00), for the benefit of the people of the city, which bond shall be conditioned upon the safekeeping or return of all tangible personal property held by the pawnbroker, as required by law and ordinance, and upon compliance with all of the provisions of this chapter.

B. No license shall be issued or renewed absent such approved bond. Termination or cancellation of an approved bond shall be grounds for summary suspension of the license and for subsequent revocation if a new bond is not furnished within thirty (30) days after demand by the city clerk.

**5.28.080      City Clerk's approval required, suspension, revocation, renewal, appeal.**

- A. The City Clerk shall have final authority to approve or deny any new license application, transfer application or renewal application for a pawnbroker's license or manager's certificate, and to review any determination of or recommendation by any city department made with respect thereto. The city clerk in his or her discretion may issue the license or deny the license application upon the basis of the criteria set forth in this chapter.
- B. The city clerk shall have the authority to suspend or revoke the pawnbroker's license or manager's certificate pursuant for failure to meet the standards and qualifications as required in this chapter.
- C. The revocation, suspension or denial of the issuance, transfer or renewal of a license or manager's certificate may be appealed to the city manager pursuant to the appeals procedure set forth in Chapter 7.70 of this code.

**5.28.090      Required book and records.**

- A. Every pawnbroker shall keep books and records sufficient to identify each pledge, contract for purchase or purchase transaction, and each forfeiture of property pursuant to the terms of a contract for purchase. Every customer shall provide to the pawnbroker the following information for such books and/or records:
  - 1. The customer's name and date of birth;
  - 2. The current street address, city, state and zip code of the customer's residence; and
  - 3. The customer's identification from:
    - a. An identification card issued in accordance with C.R.S. Section 42-2-302, C.R.S.;
    - b. A valid State driver's license;
    - c. A valid driver's license containing a picture issued by another state;
    - d. A United States military identification card;
    - e. A valid passport;
    - f. An alien registration card; or
    - g. A non-picture identification document lawfully issued by a state or federal governmental entity, if in addition to the document, the pawnbroker also obtains a clear imprint of the consignor's, seller's or trader's right index finger (or in the event the right index finger is missing, then the customer's left index finger).
  - 4. A clear imprint of the individual's right index finger. In the event that the right index finger is missing, the customer's left index finger shall be imprinted or, if the left index finger is missing, then any other of the customer's fingers or thumbs

may be imprinted. If all fingers and thumbs are missing, this fingerprint requirement shall not apply.

B. All transactions shall be kept in a numerical register in the order in which they occur, which register shall show the printed name and signature of the pawnbroker or agent, the purchase price or other monetary amount of the transaction, the date, time and place of the transaction, and an accurate and detailed account and description of each item of tangible personal property involved, including but not limited to any and all trademarks, identification numbers, serial numbers, model numbers, owner-applied numbers, brand names or other identifying marks on such property. The books and records of the licensee shall also reveal the date on which each extension of credit under a contract for purchase was terminated and whether and by whom the pawned personal property of the customer was redeemed, renewed or forfeited upon the expiration of the contract for purchase.

#### **5.28.100 Declaration of ownership.**

A. The pawnbroker shall at the time of making the contract for purchase or purchase transaction obtain a written declaration of ownership from the customer stating:

1. Whether the property that is the subject of the transaction is solely owned by the customer and, if not solely owned by the customer, the customer shall attach a power of attorney from all co-owners of the property authorizing the customer to sell or otherwise dispose of the property;
2. How long the customer has owned the property;
3. Whether the customer or someone else found the property; and
4. If the property was found, the details of the finding.

B. The pawnbroker shall require the customer to sign his or her name, in the presence of the pawnbroker, on the declaration of ownership and in the register to be kept under this chapter. The customer shall be given a copy of the contract for purchase or a receipt for the purchase transaction.

C. A contract for purchase or subsequent renewal of any contract for purchase shall contain the following information: the name and address of the licensee; a description of the pledged property sufficient to adequately identify the pledged property; the date of the transaction; and the amount, duration and terms of the contract for purchase. The pawnbroker may insert on the contract for purchase any other terms, conditions and information not inconsistent with the provisions of this chapter.

#### **5.28.110 Internet subscription service requirement.**

Except for pawnbrokers exclusively dealing in the pawnbrokering of motor vehicles, every pawnbroker shall own, maintain and operate a computer system with Internet access that includes an Internet subscription service to a city-approved, national database of contracts for purchase or purchase transactions such as LEADS Online and maintain said subscription during

the term of the pawnbroker's license. The pawnbroker shall enter and upload all information from its books and records regarding contracts for purchase, pledges and purchase transactions to such national database on a weekly basis.

**5.28.120 Requirements for records.**

- A. All original records required to be kept under this chapter must be kept in the English language, in a legible manner and shall be preserved and made accessible for inspection for a period of three (3) years after the date of redemption or forfeiture and sale of the property. Information from records and fingerprints inspected by the police department pursuant to this chapter shall be used for regulatory and law enforcement purposes only.
- B. Upon the demand of any peace officer, based upon reasonable suspicion, the pawnbroker shall produce and show any tangible personal property given to the pawnbroker in connection with any contract for purchase or purchase transaction. The pawnbroker's books shall list the date on which each contract for purchase was canceled, whether it was redeemed, or forfeited and sold.

**5.28.130 Minimum fixed period of time; maximum fixed price.**

- A. No contract for purchase shall be for a fixed period of time of less than thirty (30) days.
- B. No pawnbroker shall ask, demand or receive any fixed price that exceeds one-fifth (1/5) of the original purchase price for each month plus the amount of the original purchase price.

**5.28.140 Holding period and sale of tangible personal property.**

- A. A pawnbroker shall hold all property purchased by him or her through a purchase transaction for thirty (30) days following the date of purchase, during which time such property shall be held separate and apart from any other tangible personal property and shall not be changed in form or altered in any other way.
- B. A pawnbroker shall hold all goods received through a contract for purchase within his or her jurisdiction for ten (10) days following the maturity date of the contract for purchase, during which time such goods shall be held separate and apart from any other tangible personal property and shall not be changed in form or packaged or altered in any way.

**5.28.150 Hold order; surrender of property.**

- A. Any peace officer may order a pawnbroker to hold any tangible personal property deposited with or in custody of any pawnbroker, if the officer has reasonable suspicion to believe that such property is connected with criminal activity, for

purposes of further investigation. No sale or other disposition may be made of such property held by any pawnbroker while the hold order remains outstanding. Any such hold order shall be effective for ninety (90) days only, unless a peace officer provides written notice to the pawnshop that a criminal prosecution has been undertaken with regard to any such property within such ninety-day period, in which event the hold order shall remain in effect until the prosecuting agency has notified the pawnbroker that the prosecution has been completed or dismissed.

- B. Unless a warrant is required by law or consent is given, if any peace officer determines, after investigation, that any article of personal property held by a pawnbroker is stolen or illegally obtained property, such officer may take such property into evidence after giving the pawnbroker a receipt for it which sets forth the police department's case number as well as the reason for the confiscation.
- C. A hold order shall be a written notice issued by a peace officer to a pawnbroker in any format that, at a minimum, provides a description of the personal property subject to the hold order sufficient to adequately identify such property, states that the personal property is related to a criminal investigation, sets forth the effective date of the hold order, and contains sufficient information to identify the issuing peace officer.
- D. It shall be unlawful for any pawnbroker to sell or otherwise dispose of an item of personal property after having been notified by a peace officer of a hold order on such property as provided in this section.

**5.28.160 Seized property held by police; interpleader to determine ownership.**

When property which was removed from the pawnbroker, his or her employee, agent or any other person acting on his or her behalf, either by consent, as provided in Section 5.28.150, or seized by warrant, and held by the police department as evidence, is no longer needed as evidence for further legal proceedings and there has been no judicial determination as to who is the legal owner of the property, the city may interplead the property with the District Court for Larimer County, Colorado to resolve any ownership dispute.

**5.28.170 Prohibited Transactions.**

- A. It is unlawful for any pawnbroker, his or her employee, agent or any other person acting on his or her behalf to make a contract for purchase or make a purchase transaction with any of the following:
  - 1. Any individual under eighteen (18) years of age;
  - 2. Any individual under the influence of alcohol or any illegal narcotic drug, substance, stimulant or depressant;
  - 3. Any person the pawnbroker knows and/or whose actions would give the pawnbroker probable cause to believe the tangible property, which is the subject

of a contract for purchase or purchase transaction with that customer, was obtained illegally; or

4. Any person in possession of tangible personal property, which is the subject of a contract for purchase or purchase transaction, with an identification number thereon which is obscured. For the purposes of this subsection, the term obscure means to destroy, remove, alter, conceal or deface so as to render the identification number illegible by ordinary means of inspection.

B. With respect to a contract for purchase, no pawnbroker may permit any customer to be obligated on the same day in any way under more than one (1) contract for purchase agreement with the pawnbroker which would result in the pawnbroker's obtaining a greater amount of money than would be permitted if the pawnbroker and customer had entered into only one (1) contract for purchase covering the same tangible personal property.

C. No pawnbroker shall violate the terms of any contract for purchase.

**5.28.180      Safekeeping; insurance.**

Any pawnbroker licensed and operating under the provisions of this chapter shall provide a safe place for the keeping of pledged property received by him or her, and shall have sufficient insurance on the pledged property held by him or her for the benefit of the pledgor to pay fifty percent (50%) of the fair-market value thereof in case of fire, theft or other casualty loss. A copy of the insurance policy shall be deposited with the city clerk's office prior to approval of the license. Neither the pawnbroker nor insurer shall be relieved from their responsibility by reason of such fire, theft or other casualty loss, or from any other cause, save full performance.

**5.28.190      Inspection of premises, contents and records.**

At all times during the term of the license, the pawnbroker shall allow any peace officer, based upon reasonable suspicion, to inspect licenses and businesses, to enter the premises where the licensed business is located, including any locked area or off-site storage facilities, during normal business hours, except in an emergency, for the purpose of inspecting such premises and inspecting the items, wares, merchandise and records therein to verify compliance with this chapter and for the purpose of investigation. For the purposes of this provision, the term licensed premises shall not include any private residence adjacent to the licensed premises except such portion of said residence, if any, that is used in the operation of the business of the pawnbroker.

**5.28.200      Hours.**

It is unlawful for any person to operate as a pawnbroker between the hours of 8:00 p.m. and 12:00 midnight, and between the hours of 12:00 midnight and 8:00 a.m. of any day.

**5.28.210      Pawnbroker license limited to one location.**

A pawnbroker shall conduct his or her pawnshop business from only the licensed premise which shall be the location listed on the application for a pawnbroker's license and the pawnbroker's license. This provision shall not prohibit a pawnbroker from using warehouses or other storage locations away from the licensed place of business, but such other location shall be used only if the pawnbroker first submits notice to the city clerk's office in writing of such off-site locations or if the pawnbroker has previously identified such other location in his or her application for a pawnbroker's license. Such off-site locations shall be open to any peace officer for inspection as provided for in Section 5.28.190 of this code.

#### **5.28.220      Location of pawnbroker businesses.**

- A. Notwithstanding any other provision in the city code to the contrary, the business premises of a pawnbroker ~~business~~ shall not be located within one (1) mile of the business premises of another pawnbroker ~~business~~. This restriction shall apply to all pawnbroker ~~business~~ licenses issued under this chapter after March 21, 2012~~the~~<sup>[g1]</sup> ~~effective date of the ordinance codified herein. However, T~~his one-mile restriction shall not apply ~~to pawnbroker businesses licensed under this chapter having a city sales tax license issued prior to February 21, 2012. Such exempted pawnbroker businesses shall also be permitted to relocate one time to a new location within the city without being subject to this one-mile restriction. A relocating pawnbroker shall notify the city clerk in writing of the relocation and provide the city clerk with the address of the new location and the date of occupancy, which notice shall be provided to the city clerk within thirty (30) days of the pawnbroker's occupancy of the new location, to the renewal of an existing pawnbroker business license, to the purchase of an existing pawnbroker business, or to the issuance of a pawnbroker license for an applicant who has received a city occupancy or sales tax license prior to [date] for a structure in which the pawnbroker business shall be located.~~
- B. For the purpose of this section, the distance between pawnbroker businesses shall be measured in a straight line, without regard to intervening structures, objects or city limits, from the property line of one (1) pawnbroker business to the property line of the other pawnbroker business. For the purposes of the one-mile restriction, determination of the propriety of a location will be made by the city clerk before a pawnbroker's license is issued.

#### **5.28.230      Existing pawnbrokers; pPeriod for initial compliance.**

~~All pawnbrokers operating a pawnbroker business at any location in the city on March 21, 2012 are permanently exempted from the location requirement stated in Section 5.28.220 above so long as that business remains in the same location. In addition to this exemption for existing pawnbrokers, aAll of said pawnbrokers are hereby granted six (6) months from March 21, 2012 in which to become into full compliance with all applicable other requirements of this chapter, after which date anysaid pawnbrokers operating within the city without a license shall be deemed in violation of Section 5.28.020, shall be subject to all applicable requirements and penalties of this chapter.~~

**5.58.240      Violations and penalties.**

In addition to being subject to the revocation, suspension or denial of a license or manager's permit issued under this chapter, any person, including but not limited to any customer or pawnbroker, who violates any provision of this chapter shall be guilty of a misdemeanor offense punishable in accordance with Section 1.12.010 of this code.

**5.58.250      Notice of penalties required.**

Every pawnbroker shall conspicuously post a written notice, provided by the city's police department, in a place clearly visible to all customers which sets forth the penalties of this chapter and of C.R.S. Section 12-56-104(5),C.R.S., concerning providing false information to a pawnbroker and C.R.S. Section 18-4-410,C.R.S., concerning theft by receiving.

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Assistant City Attorney

First Reading: February 21, 2012

Second Reading: March 6, 2012

**ORDINANCE No. \_\_\_\_\_**

**AN ORDINANCE REPEALING AND REENACTING CHAPTER 5.28 OF  
THE LOVELAND MUNICIPAL CODE REGARDING PAWBROKERS  
TO LICENSE AND REGULATE PAWBROKERS AND PAWBROKER  
OPERATIONS**

**WHEREAS**, pursuant to Chapter 5.28 of the City Code, the City of Loveland's current pawnbroker regulations are limited to the hours of operation; and

**WHEREAS**, various pawnbrokers within the City have requested that the City adopt a licensing process to ensure the integrity and reputable business practices of current and future pawnbrokers operating within the City; and

**WHEREAS**, City Council reviewed the pawnbrokers' licensing request and other regulatory alternatives at the January 10, 2012 City Council study session; and

**WHEREAS**, the City Council finds that an ordinance to license and regulate pawnbrokers and pawnbroker operations would benefit the health, safety and welfare of the City's residents and, therefore, is in the City's best interest.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE  
CITY OF LOVELAND, COLORADO:**

**Section 1.** That Chapter 5.28 of the Loveland Municipal Code is repealed and reenacted to read in full as follows:

**Chapter 5.28  
Pawnbrokers**

**5.28.010      Definitions.**

The following words, terms and phrases, when used in this chapter, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Applicant* shall mean the individual, partnership, limited liability company, corporation, or other business entity that seeks a pawnshop license to be held in its name.

*Contract for purchase* shall mean a contract entered into between a pawnbroker and a customer pursuant to which money is advanced to the customer by the pawnbroker on the delivery of tangible personal property by the customer on the condition that the customer, for a fixed price and within a fixed period of time, to be no less than thirty (30) days, has the option to cancel the contract.

*Chief of Police* shall mean the duly appointed City of Loveland Chief of Police, or his or her designee.

*City Clerk* shall mean the duly appointed City of Loveland City Clerk, or his or her designee.

*Customer* shall mean a person who delivers personal property into the possession of a pawnbroker for the purpose of entering into a contract for purchase or a purchase transaction.

*Fixed period of time* shall mean that period of time, to be no less than thirty (30) days, set forth in a contract for purchase within which the customer has the option to cancel the contract.

*Fixed price* shall mean the amount agreed upon to cancel a contract for purchase during the option period. Said fixed price shall not exceed one-fifth (1/5) of the original purchase price for each month plus the original purchase price.

*License* shall mean any document or permit issued by the city which authorizes an individual, partnership, limited liability company, corporation, or other business entity to conduct pawnbrokering activities within the city.

*Manager* shall mean an individual employed by a pawnbroker who is designated as manager or whose duties entail the exercise of discretion and independent judgment in the administration of the affairs of a pawnbroker's business and the supervision of other employees, as well as the making of loans, the execution of any documents required to be prepared pursuant to this chapter and/or the purchasing of goods or property on behalf of the business.

*Manager's certificate* shall mean the document issued by the city which authorizes an individual to perform his or her duties as manager for the pawnbroker.

*Option* shall mean the fixed period of time and the fixed price agreed upon by the customer and the pawnbroker in which a contract for purchase may be, but does not have to be, rescinded by the customer.

*Owner* shall mean a person, other than a pawnbroker, who claims to be vested with the legal or rightful title to certain tangible personal property.

*Pawnbroker* shall mean a person regularly engaged in the business of making contracts for purchase or purchase transactions in the course said business. The term does not include "secondhand dealers" as defined in and regulated by C.R.S. Sections 18-13-114 through 18-13-118. *Pawnbroker* shall also include, without limitation, all owners, managers or employees of a pawnbroker business required to be licensed by the city whose regular duties include making contracts for purchase, purchase transactions or executing any documents required to be prepared pursuant to this chapter.

*Pawnbrokering* shall mean the business of a pawnbroker as defined by this section.

*Peace officer* shall mean any undersheriff, deputy sheriff (other than one appointed with authority only to serve summonses and execute civil process), city police officer, state patrol

officer, town marshal, or investigator for a district attorney or the Attorney General, who is engaged in full-time employment by the State or a city, county, town or judicial district within this State.

*Person* shall mean any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity.

*Pledge* or *pledged property* shall mean any tangible personal property deposited with a pawnbroker pursuant to a contract for purchase in the course of his or her business as defined in this section.

*Pledgor* shall mean a customer who delivers a pledge into the possession of a pawnbroker.

*Purchase transaction* shall mean the purchase by a pawnbroker in the course of his or her business of tangible personal property for resale, other than newly manufactured tangible personal property which has not previously been sold at retail, when such purchase does not constitute a contract for purchase.

*State* shall mean the State of Colorado.

*Tangible personal property* shall mean all personal property other than choses in action, securities, or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of business in connection with a contract for purchase or purchase transaction.

#### **5.28.020      License required.**

It shall be unlawful for any person to engage in pawnbrokering except as provided in and authorized by this chapter and without first having obtained a license from the city clerk. Such license shall be kept current at all times, and the failure to maintain a current license shall constitute a violation of this section.

#### **5.28.030      Application.**

All applicants for a pawnbroker's license or manager's certificate shall file an application for such license or certificate with the city clerk's office on forms to be provided by the city clerk's office. Each individual, partner of a partnership, manager of a limited liability company, officer, director and holder of ten percent (10%) or more of the corporate stock of the corporate applicant or holder of ten percent (10%) or more interest in a limited liability company shall be named in each pawnbroker's license application form, and each of them shall provide a complete set of fingerprints as part of the application. In addition, each applicant shall certify that the proposed pawnbroker establishment meets the requirements of the city's municipal code and regulations and provide proof of the applicant's right to possession of the premises wherein pawnbrokering will be conducted. Each individual named in the application shall be of good moral character and each corporate applicant for a pawnbroker's license shall furnish evidence

that it is in good standing with the state or, in the case of a foreign corporation, evidence that it is currently authorized to do business in the state and in good standing.

**5.28.040 Application and License fees.**

- A. Each applicant for a pawnbroker's license, whether an individual, partnership, limited liability company or corporation, shall pay an application and license fee at the time the application is filed for a new license, transfer of license or renewal . The application fee shall be set annually by city council resolution and shall be nonrefundable. Said application fee shall be an annual fee set in an amount necessary to defray the city's actual and reasonable direct and indirect expenses of processing the pawnshop licensing application.
- B. Each applicant for a pawnbroker's license whose application is approved shall receive a license. The license fee shall be set annually by city council resolution. Said fee shall be an annual fee set in an amount necessary to defray the city's actual and reasonable direct and indirect expenses related to administration and enforcement of this chapter. The license fee shall be refunded to the applicant, if no license is granted.
- C. An issued pawnbroker's license shall be valid only for the calendar year in which it is issued. A pawnbroker's license application or license renewal application shall be valid only for the calendar year in which the associated pawnbroker's license is issued.

**5.28.050 Investigation and approval of applicants and managers required; self-reporting of violations.**

- A. No pawnbroker's license shall be issued by the city clerk until such application for a license has been investigated by the chief of police and compliance with the city's municipal code and regulations has been established. Each applicant shall submit a nonrefundable investigation and/or fingerprint and photograph fee for each individual named pursuant to Section 5.28.030 in the pawnbroker's license application at the time such application is filed in an amount not to exceed that charged by the Colorado Bureau of Investigation. Further, each applicant shall furnish sufficient documentation to prove the name, date of birth and residency of each individual named in the pawnbroker's license application, and shall provide any other information which is requested on such application.
- B. No licensee shall employ an individual as a manager, nor shall any individual accept such employment as a manager, unless such individual has been investigated and been granted a manager's certificate by the city clerk pursuant to the following:
  1. Prior to becoming employed as a manager by a licensee or to obtain a renewal certificate, an applicant for a manager's certificate shall provide a complete set of fingerprints as part of the application. Further, each applicant for a manager's

certificate, or renewal of such certificate, shall furnish sufficient documentation to prove the applicant's name, date of birth and residency, and shall provide any other information which is requested on the application.

2. An applicant for a manager's certificate shall pay a nonrefundable fingerprint and investigation fee in an amount not to exceed that charged by the Colorado Bureau of Investigation. If, however, the applicant can provide proof of a criminal history investigation completed by the Colorado Bureau of Investigation within the year immediately preceding the application, such individual need only submit a fingerprint card and photograph and pay the associated fee.
3. Notwithstanding subsections 1 and 2 of paragraph B of this section, any individual named pursuant to Section 5.28.030 in a new pawnbroker's license application that is approved may receive a manager's certificate for the premises specified in the application without cost or further investigation, but shall be subject to and shall meet all other standards and qualifications required to obtain a manager's certificate as provided in this chapter.
4. Each manager's certificate shall have clearly imprinted thereon a statement that it is valid only for the period of time specified thereon, and only in the pawn industry. A provisional certificate shall be issued by the city clerk upon filing of the application, which provisional certificate shall remain in effect during the pendency of an applicant's background investigation. Each provisional or regular manager's certificate shall be stamped with the name of the pawnbroker and business location(s) for which it is valid. A regular certificate issued shall be for a maximum period of three (3) years; and such certificate shall automatically expire: (i) upon a change of employment by the certificate holder, unless renewed within ten (10) days thereafter, or (ii) if the certificate holder is not employed in the pawn industry within the city for a period of ninety (90) days or more. A manager's certificate which has expired may be renewed by the application process described above.
5. A manager's certificate may be revoked when the certificate holder has been determined by the city clerk to be in violation of any of the provisions of this chapter.

C. It shall be unlawful for any person to make a false statement upon an application for a pawnbroker license and/or application for a manager's certificate.

D. No pawnbroker license or manager's certificate shall be renewed or issued to the following persons under the provisions of this chapter:

1. Subject to the provisions contained in C.R.S. Section 24-5-101, a person who has been convicted of: any felony of this State or any crime elsewhere which under the laws of this State would be a felony; any crime of which fraud or intent to defraud was an element, whether in this State or elsewhere; any crime of embezzlement or larceny in this State or elsewhere against an employer or business; or any criminal or civil violation in this State or elsewhere related to any law or ordinance pertaining to the pawn industry;
2. Any individual under the age of eighteen (18); or

3. Any person who has made a false, misleading or fraudulent statement on his or her application for a pawnbroker's license or a manager's certificate.
- E. Any applicant holding a pawnbroker's license, individual named pursuant to Section 5.28.030 in a pawnbroker's license application, or individual holding a manager's certificate pursuant to this chapter who is convicted of any violation set forth in subsection 1 of paragraph D of this section subsequent to the issuance of such license or certificate shall report such conviction to the city clerk's office within five (5) business days of the conviction.
- F. Notwithstanding subsection 1 of paragraph D of this section, a pawnbroker's license or manager's certificate may be issued, renewed or retained where the sole basis for a denial or revocation of such license or certificate is a conviction for a criminal or civil violation related to any law or ordinance pertaining to the pawn industry and where the applicant demonstrates to the city clerk satisfactory evidence of rehabilitation, especially evidence pertaining to the period of time between the applicant's conviction that serves as the basis for the denial and the consideration of the application for such license or certificate.
- G. No employee under eighteen (18) years of age shall make loans, purchase any goods or property on behalf of the business or execute any document required to be prepared pursuant to this chapter, unless such employee is under the direct supervision of a manager holding a valid manager certificate who is physically present on the licensed premises.
- H. Within forty-five (45) days of receipt of an application for a new license, for a transfer of ownership, or to renew a license, the city clerk shall issue, transfer or renew such license, provided that compliance with the city's municipal code and regulations has been established and the chief of police, after investigation, has made a recommendation regarding whether or not the applicant will operate or has operated the business in such a manner as to fully comply with the requirements and purposes of this chapter and is of good moral character. Such recommendation shall be made within thirty (30) days of receipt of said application from the city clerk's office.
- I. A license shall be limited to use at the premises specified in the application. Such license shall not be transferable to a premises at a different location except as expressly provided in paragraph A of Section 5.28.220.

#### **5.28.055 Transferability.**

- A. No license issued under this chapter shall be transferred except as provided in this section.
- B. No later than thirty (30) days after any transfer of a ten percent (10%) or more ownership interest in a pawnbroker business licensed under this chapter, whether the transfer is voluntary or involuntary (such as the result of death or by operation of

law), an application for the transfer, on a form provided by the city clerk, shall be filed with the city clerk, which application shall include any sets of fingerprints the city clerk determines are needed for the city's review of the transfer application under the provisions of this chapter. There shall also be paid to the city clerk at the time of the filing of the transfer application any transfer application fee set by the city council by resolution. The transfer application shall be reviewed in accordance with the same criteria required in Section 5.28.050 for a new license application and in accordance with all other applicable provisions of this chapter.

- C. Once a completed transfer application is filed and any required fee is paid, as provided in paragraph B of this section, the pawnbroker business that is the subject of the application may continue to operate as if licensed under this chapter for a period of forty-five (45) days provided the business operates in accordance with all other applicable requirements of this chapter. If for any reason the applicant's transfer application has not been approved within that forty-five (45) day period, any continued operation of the pawnbroker business after that period shall be considered a violation of Section 5.28.020.

**5.28.060 Manager or change of manager.**

- A. A pawnbroker may employ a manager to operate a pawnbrokering business, provided that the pawnbroker retains complete control of all aspects of the pawnbrokering business, including but not limited to the pawnbroker's right to possession of the premises, his or her responsibility for all debts and his or her risk of all loss or opportunity for profit from the business.
- B. In the event a pawnbroker changes the manager of a pawnbroker establishment, the pawnbroker shall report such change to the city clerk's office and register the new manager on forms provided by the city clerk's office within thirty (30) calendar days of such change. The new manager shall be subject to and shall meet the standards and qualifications required to obtain a manager's certificate as provided in this chapter.
- C. Failure of a pawnbroker to report such change in manager or to report the failure of the manager to meet the standards and qualifications as required in this chapter to obtain a manager's certificate, may be grounds for termination of the license.

**5.28.070 Surety bond required.**

- A. Every applicant for a pawnbroker's license shall furnish a bond from a responsible surety, to be approved by the city clerk, in the amount of five thousand dollars (\$5,000.00), for the benefit of the people of the city, which bond shall be conditioned upon the safekeeping or return of all tangible personal property held by the pawnbroker, as required by law and ordinance, and upon compliance with all of the provisions of this chapter.

B. No license shall be issued or renewed absent such approved bond. Termination or cancellation of an approved bond shall be grounds for summary suspension of the license and for subsequent revocation if a new bond is not furnished within thirty (30) days after demand by the city clerk.

**5.28.080      City Clerk's approval required, suspension, revocation, renewal, appeal.**

- A. The City Clerk shall have final authority to approve or deny any new license application, transfer application or renewal application for a pawnbroker's license or manager's certificate, and to review any determination of or recommendation by any city department made with respect thereto. The city clerk in his or her discretion may issue the license or deny the license application upon the basis of the criteria set forth in this chapter.
- B. The city clerk shall have the authority to suspend or revoke the pawnbroker's license or manager's certificate pursuant for failure to meet the standards and qualifications as required in this chapter.
- C. The revocation, suspension or denial of the issuance, transfer or renewal of a license or manager's certificate may be appealed to the city manager pursuant to the appeals procedure set forth in Chapter 7.70 of this code.

**5.28.090      Required book and records.**

- A. Every pawnbroker shall keep books and records sufficient to identify each pledge, contract for purchase or purchase transaction, and each forfeiture of property pursuant to the terms of a contract for purchase. Every customer shall provide to the pawnbroker the following information for such books and/or records:
  1. The customer's name and date of birth;
  2. The current street address, city, state and zip code of the customer's residence; and
  3. The customer's identification from:
    - a. An identification card issued in accordance with C.R.S. Section 42-2-302;
    - b. A valid State driver's license;
    - c. A valid driver's license containing a picture issued by another state;
    - d. A United States military identification card;
    - e. A valid passport;
    - f. An alien registration card; or
    - g. A non-picture identification document lawfully issued by a state or federal governmental entity, if in addition to the document, the pawnbroker also obtains a clear imprint of the consignor's, seller's or trader's right index finger (or in the event the right index finger is missing, then the customer's left index finger).
  4. A clear imprint of the individual's right index finger. In the event that the right index finger is missing, the customer's left index finger shall be imprinted or, if the left index finger is missing, then any other of the customer's fingers or thumbs

may be imprinted. If all fingers and thumbs are missing, this fingerprint requirement shall not apply.

B. All transactions shall be kept in a numerical register in the order in which they occur, which register shall show the printed name and signature of the pawnbroker or agent, the purchase price or other monetary amount of the transaction, the date, time and place of the transaction, and an accurate and detailed account and description of each item of tangible personal property involved, including but not limited to any and all trademarks, identification numbers, serial numbers, model numbers, owner-applied numbers, brand names or other identifying marks on such property. The books and records of the licensee shall also reveal the date on which each extension of credit under a contract for purchase was terminated and whether and by whom the pawned personal property of the customer was redeemed, renewed or forfeited upon the expiration of the contract for purchase.

#### **5.28.100 Declaration of ownership.**

A. The pawnbroker shall at the time of making the contract for purchase or purchase transaction obtain a written declaration of ownership from the customer stating:

1. Whether the property that is the subject of the transaction is solely owned by the customer and, if not solely owned by the customer, the customer shall attach a power of attorney from all co-owners of the property authorizing the customer to sell or otherwise dispose of the property;
2. How long the customer has owned the property;
3. Whether the customer or someone else found the property; and
4. If the property was found, the details of the finding.

B. The pawnbroker shall require the customer to sign his or her name, in the presence of the pawnbroker, on the declaration of ownership and in the register to be kept under this chapter. The customer shall be given a copy of the contract for purchase or a receipt for the purchase transaction.

C. A contract for purchase or subsequent renewal of any contract for purchase shall contain the following information: the name and address of the licensee; a description of the pledged property sufficient to adequately identify the pledged property; the date of the transaction; and the amount, duration and terms of the contract for purchase. The pawnbroker may insert on the contract for purchase any other terms, conditions and information not inconsistent with the provisions of this chapter.

#### **5.28.110 Internet subscription service requirement.**

Except for pawnbrokers exclusively dealing in the pawnbrokering of motor vehicles, every pawnbroker shall own, maintain and operate a computer system with Internet access that includes an Internet subscription service to a city-approved, national database of contracts for purchase or purchase transactions such as LEADS Online and maintain said subscription during

the term of the pawnbroker's license. The pawnbroker shall enter and upload all information from its books and records regarding contracts for purchase, pledges and purchase transactions to such national database on a weekly basis.

**5.28.120 Requirements for records.**

- A. All original records required to be kept under this chapter must be kept in the English language, in a legible manner and shall be preserved and made accessible for inspection for a period of three (3) years after the date of redemption or forfeiture and sale of the property. Information from records and fingerprints inspected by the police department pursuant to this chapter shall be used for regulatory and law enforcement purposes only.
- B. Upon the demand of any peace officer, based upon reasonable suspicion, the pawnbroker shall produce and show any tangible personal property given to the pawnbroker in connection with any contract for purchase or purchase transaction. The pawnbroker's books shall list the date on which each contract for purchase was canceled, whether it was redeemed, or forfeited and sold.

**5.28.130 Minimum fixed period of time; maximum fixed price.**

- A. No contract for purchase shall be for a fixed period of time of less than thirty (30) days.
- B. No pawnbroker shall ask, demand or receive any fixed price that exceeds one-fifth (1/5) of the original purchase price for each month plus the amount of the original purchase price.

**5.28.140 Holding period and sale of tangible personal property.**

- A. A pawnbroker shall hold all property purchased by him or her through a purchase transaction for thirty (30) days following the date of purchase, during which time such property shall be held separate and apart from any other tangible personal property and shall not be changed in form or altered in any other way.
- B. A pawnbroker shall hold all goods received through a contract for purchase within his or her jurisdiction for ten (10) days following the maturity date of the contract for purchase, during which time such goods shall be held separate and apart from any other tangible personal property and shall not be changed in form or packaged or altered in any way.

**5.28.150 Hold order; surrender of property.**

- A. Any peace officer may order a pawnbroker to hold any tangible personal property deposited with or in custody of any pawnbroker, if the officer has reasonable suspicion to believe that such property is connected with criminal activity, for

purposes of further investigation. No sale or other disposition may be made of such property held by any pawnbroker while the hold order remains outstanding. Any such hold order shall be effective for ninety (90) days only, unless a peace officer provides written notice to the pawnshop that a criminal prosecution has been undertaken with regard to any such property within such ninety-day period, in which event the hold order shall remain in effect until the prosecuting agency has notified the pawnbroker that the prosecution has been completed or dismissed.

- B. Unless a warrant is required by law or consent is given, if any peace officer determines, after investigation, that any article of personal property held by a pawnbroker is stolen or illegally obtained property, such officer may take such property into evidence after giving the pawnbroker a receipt for it which sets forth the police department's case number as well as the reason for the confiscation.
- C. A hold order shall be a written notice issued by a peace officer to a pawnbroker in any format that, at a minimum, provides a description of the personal property subject to the hold order sufficient to adequately identify such property, states that the personal property is related to a criminal investigation, sets forth the effective date of the hold order, and contains sufficient information to identify the issuing peace officer.
- D. It shall be unlawful for any pawnbroker to sell or otherwise dispose of an item of personal property after having been notified by a peace officer of a hold order on such property as provided in this section.

**5.28.160 Seized property held by police; interpleader to determine ownership.**

When property which was removed from the pawnbroker, his or her employee, agent or any other person acting on his or her behalf, either by consent, as provided in Section 5.28.150, or seized by warrant, and held by the police department as evidence, is no longer needed as evidence for further legal proceedings and there has been no judicial determination as to who is the legal owner of the property, the city may interplead the property with the District Court for Larimer County, Colorado to resolve any ownership dispute.

**5.28.170 Prohibited Transactions.**

- A. It is unlawful for any pawnbroker, his or her employee, agent or any other person acting on his or her behalf to make a contract for purchase or make a purchase transaction with any of the following:
  - 1. Any individual under eighteen (18) years of age;
  - 2. Any individual under the influence of alcohol or any illegal narcotic drug, substance, stimulant or depressant;
  - 3. Any person the pawnbroker knows and/or whose actions would give the pawnbroker probable cause to believe the tangible property, which is the subject

of a contract for purchase or purchase transaction with that customer, was obtained illegally; or

4. Any person in possession of tangible personal property, which is the subject of a contract for purchase or purchase transaction, with an identification number thereon which is obscured. For the purposes of this subsection, the term obscure means to destroy, remove, alter, conceal or deface so as to render the identification number illegible by ordinary means of inspection.

B. With respect to a contract for purchase, no pawnbroker may permit any customer to be obligated on the same day in any way under more than one (1) contract for purchase agreement with the pawnbroker which would result in the pawnbroker's obtaining a greater amount of money than would be permitted if the pawnbroker and customer had entered into only one (1) contract for purchase covering the same tangible personal property.

C. No pawnbroker shall violate the terms of any contract for purchase.

**5.28.180      Safekeeping; insurance.**

Any pawnbroker licensed and operating under the provisions of this chapter shall provide a safe place for the keeping of pledged property received by him or her, and shall have sufficient insurance on the pledged property held by him or her for the benefit of the pledgor to pay fifty percent (50%) of the fair-market value thereof in case of fire, theft or other casualty loss. A copy of the insurance policy shall be deposited with the city clerk's office prior to approval of the license. Neither the pawnbroker nor insurer shall be relieved from their responsibility by reason of such fire, theft or other casualty loss, or from any other cause, save full performance.

**5.28.190      Inspection of premises, contents and records.**

At all times during the term of the license, the pawnbroker shall allow any peace officer, based upon reasonable suspicion, to inspect licenses and businesses, to enter the premises where the licensed business is located, including any locked area or off-site storage facilities, during normal business hours, except in an emergency, for the purpose of inspecting such premises and inspecting the items, wares, merchandise and records therein to verify compliance with this chapter and for the purpose of investigation. For the purposes of this provision, the term licensed premises shall not include any private residence adjacent to the licensed premises except such portion of said residence, if any, that is used in the operation of the business of the pawnbroker.

**5.28.200      Hours.**

It is unlawful for any person to operate as a pawnbroker between the hours of 8:00 p.m. and 12:00 midnight, and between the hours of 12:00 midnight and 8:00 a.m. of any day.

**5.28.210      Pawnbroker license limited to one location.**

A pawnbroker shall conduct his or her pawnshop business from only the licensed premise which shall be the location listed on the application for a pawnbroker's license and the pawnbroker's license. This provision shall not prohibit a pawnbroker from using warehouses or other storage locations away from the licensed place of business, but such other location shall be used only if the pawnbroker first submits notice to the city clerk's office in writing of such off-site locations or if the pawnbroker has previously identified such other location in his or her application for a pawnbroker's license. Such off-site locations shall be open to any peace officer for inspection as provided for in Section 5.28.190 of this code.

#### **5.28.220      Location of pawnbroker businesses.**

- A. Notwithstanding any other provision in the city code to the contrary, the business premises of a pawnbroker shall not be located within one (1) mile of the business premises of another pawnbroker. This restriction shall apply to all pawnbroker licenses issued under this chapter after March 21, 2012. However, this one-mile restriction shall not apply to pawnbroker businesses licensed under this chapter having a city sales tax license issued prior to February 21, 2012. Such exempted pawnbroker businesses shall also be permitted to relocate one time to a new location within the city without being subject to this one-mile restriction. A relocating pawnbroker shall notify the city clerk in writing of the relocation and provide the city clerk with the address of the new location and the date of occupancy, which notice shall be provided to the city clerk within thirty (30) days of the pawnbroker's occupancy of the new location.
- B. For the purpose of this section, the distance between pawnbroker businesses shall be measured in a straight line, without regard to intervening structures, objects or city limits, from the property line of one (1) pawnbroker business to the property line of the other pawnbroker business. For the purposes of the one-mile restriction, determination of the propriety of a location will be made by the city clerk before a pawnbroker's license is issued.

#### **5.28.230      Period for initial compliance.**

All pawnbrokers are hereby granted six (6) months from March 21, 2012 in which to come into full compliance with all applicable requirements of this chapter, after which date any pawnbroker operating within the city without a license shall be deemed in violation of Section 5.28.020.

#### **5.58.240      Violations and penalties.**

In addition to being subject to the revocation, suspension or denial of a license or manager's permit issued under this chapter, any person, including but not limited to any customer or pawnbroker, who violates any provision of this chapter shall be guilty of a misdemeanor offense punishable in accordance with Section 1.12.010 of this code.

#### **5.58.250      Notice of penalties required.**

Every pawnbroker shall conspicuously post a written notice, provided by the city's police department, in a place clearly visible to all customers which sets forth the penalties of this chapter and of C.R.S. Section 12-56-104(5), concerning providing false information to a pawnbroker and C.R.S. Section 18-4-410, concerning theft by receiving.

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Nasar Garcia  
Assistant City Attorney

**RESOLUTION # R-18-2012****A RESOLUTION AMENDING THE 2012 SCHEDULE OF RATES, CHARGES AND FEES FOR CITY CLERK SERVICES PROVIDED BY THE CITY OF LOVELAND, COLORADO TO INCLUDE LICENSING OF PAWNBROKERS**

**WHEREAS**, City Council adopted the rates, charges and fees for services provided by the City of Loveland (the “City”) for calendar year 2012 in Resolution #R-62-2011, other than services provided by the Stormwater Enterprise and the Water and Power Department; and

**WHEREAS**, on March 6, 2012 City Council adopted an ordinance regulating pawnbrokers and pawnbroker operations to ensure the integrity and reputable business practices of current and future pawnbrokers operating within the City; and

**WHEREAS**, in order to cover the City’s costs in administering and enforcing the pawnbroker licensing process the City must adopt annual fees set in an amount necessary to defray the city’s actual and reasonable direct and indirect expenses related to such administration and enforcement; and

**WHEREAS**, the City Council finds that the proposed pawnbroker licensing fees set forth below are reasonable and necessary to protect the health, safety and welfare of the City’s residents.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO AS FOLLOWS:**

**Section 1.** That all previous rates, charges and fees for services provided by the City Clerk are hereby reaffirmed and ratified.

**Section 2.** That City Clerk schedule of rates, charges and fees for 2012 is hereby amended to include pawnbroker licensing fees as follows:

**CITY CLERK****Pawnbroker Licensing:**

Application Fee.....	\$400.00
Annual License Fee.....	\$100.00
Annual License Renewal Fee.....	\$100.00
3-Year Manager’s Certificate Fee.....	\$100.00
Transfer of License Application Fee.....	\$400.00
Section 5.28.220 Business Relocation Application Fee.....	\$225.00

**Section 3.** That this resolution shall take effect as of the dates of its adoption.

ADOPTED this \_\_\_\_\_ day of March, 2012.

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Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Jesus Garcia  
Assistant City Attorney

A Resolution Amending the 2012 Schedule of Rates, Charges and Fees for City Clerk Services Provided by the City of Loveland, Colorado to Include Licensing of Pawnbrokers



**CITY OF LOVELAND**  
**WATER & POWER DEPARTMENT**  
200 North Wilson • Loveland, Colorado 80537  
(970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

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<b>AGENDA ITEM:</b>	<b>4</b>
<b>MEETING DATE:</b>	3/6/2012
<b>TO:</b>	City Council
<b>FROM:</b>	W&P Department
<b>PRESENTER:</b>	Andy Tenbraak and John McGee

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**TITLE:** Consideration of a Cross Connection Control Program (CCCP) Ordinance for the City of Loveland on second reading.

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the ordinance on second reading.

**OPTIONS:**

1. Adopt the action as recommended by Loveland Utilities Commission and City Staff
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

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**DESCRIPTION:**

This is a legislative action. This ordinance amends Title 13 of the Loveland Municipal Code by creating a new Chapter 13.06 regarding cross connection control. At the January 31, 2012, City Council Study Session City staff received direction to bring forward the CCCP ordinance and program for formal City Council consideration at a subsequent regular meeting of City Council.

**BUDGET IMPACT:**

Positive  
 Negative  
 Neutral or negligible

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**SUMMARY:**

The Colorado Department of Public Health and Environment (CDPHE) mandates that the City of Loveland adopt a Cross Connection Control Program in accordance with Article 12 of the Primary Drinking Water Regulations. City Staff is recommending the CCCP ordinance, as shown in Attachment A, for City Council consideration and adoption. This ordinance provides a framework for how the City of Loveland will take the next step in protecting its drinking water system from backflow. A backflow means the flow of water or other liquids, gasses or solids from any source back into the public water

system in the opposite direction of its intended flow. There have been documented cases in Colorado when a backflow induced contaminant entered the drinking water system and caused sickness and months of maintenance work to restore the water system to a safe level again. There have been no documented cases of backflow entering the City of Loveland's water supply. The Colorado Department of Public Health and Environment (CDPHE) requires that a containment assembly device be installed on all service connections that pose a health risk to the public water supply.

To date, staff has presented the CCCP ordinance to the LUC during the November and December 2011 meetings and to the Construction Advisory Board (CAB) in December 2011. Both the LUC and CAB have supported the implementation of the CCCP and LUC approved a motion for City Council to approve the CCCP ordinance. On January 31, 2012, staff presented the CCCP ordinance to City Council to inform and educate the Council on the purpose and recommended implementation of the program.

During the January 31, 2012 study session the City Council had specific questions on the impact of the CCCP to customers served by the City's domestic water supply. Staff mentioned that the main objective of the CCCP is to protect the City domestic water supply from any customer that poses a potential hazard to the system. During the study session a number of questions surfaced which are discussed below:

*Who will be impacted by the adoption of this program?*

The proposed ordinance clarifies that all City of Loveland customers that pose a potential hazard to the City's water system are subject to this ordinance. Staff has proposed that a prioritized approach be taken to implement this ordinance. High hazard non-residential and Homeowners Associations (HOA's) with dedicated irrigation taps will first receive a written survey to learn what types of uses are found at each service connection to the City's water system. The survey results will be analyzed and then staff will conduct on-site visits to compare information and determine if a containment assembly is required at that location. If a containment assembly is required, staff will discuss location, type of backflow device and schedule for installation with the customer. At this time and near future, containment assemblies will not be required for residential customers. However, if the residential user has an irrigation system it is required that the user install a proper backflow (isolation) device on their irrigation system in accordance with municipal code Title 13.04.220 and proposed Title 13.06.

*When this program is adopted what are the costs to the customers?*

The material and installation costs for a typical non-residential and HOA containment assembly may range in between \$700 to \$3000, depending on size. The material and installation costs for a typical residential customer with an irrigation system or other hazardous use are estimated at \$150 to \$200, if a correct device is not already installed and operational. Annual containment assembly testing cost will range in between \$35 to \$60. This testing must be done by a properly licensed backflow assembly tester who must be registered with the State of Colorado. At this time, the City is not requiring annual or periodic testing of residential backflow devices for irrigation.

*Will thermal expansion be an issue for customers when this ordinance is adopted?*

For customers that pose a potential hazard to the City's water system will need to work with qualified plumbers to make sure that the containment assembly will not create expansion/contraction of the building water system primarily caused by hot water heaters.

Staff has begun the process of implementing the CCCP in-house and has made significant steps, including:

- Preparation of CCCP draft handbook that will be available to the customer, vendors, contractors, etc. in the near future.
- Purchasing of backflow prevention software that will be used to track impacted customers regarding containment assembly installation, testing and operation.
- Surveyed surrounding northern Colorado communities on the use of 'Best Management Practices' for the implementation of a CCCP.
- Development of a public outreach program that provides information to all customer classes about the program requirements, acceptable equipment, installation techniques and documentation. Some outreach activities that have been implemented to date include presentations at the annual City Public Works Day and Water Festivals. Staff has also posted backflow prevention information on the internet and outreach to local vendors, suppliers, contractors, and backflow testers regarding the program.
- Internal City meetings with Building, Fire, Parks, Water and Power, City Attorney's Office and Information Technology to coordinate the flow and exchange of information regarding the CCCP and inspection history.

The CCCP will have a small financial impact on the City for implementation, tracking and surveys to identify potential cross connection hazards. The City has recently purchased special software for assisting in implementation, tracking, surveys and on-going operations of the CCCP. The 2012 O&M budget for this program is \$70,000. The budget will be reviewed each year to assess the financial impacts of the City operating and managing the program and will be updated as necessary.

Attachment B includes the staff report that was referenced during the January 31, 2012 City Council Study Session.

This item went to Council for first reading on February 21, 2012, where Council passed it unanimously.

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REVIEWED BY CITY MANAGER:



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**LIST OF ATTACHMENTS:**

Attachment A: *Cross Connection Control Program Ordinance*

Attachment B: *Staff Report Memorandum "Cross Connection Control Program (CCCP), dated January 19, 2012*

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**FIRST READING** February 21, 2012

**SECOND READING** March 6, 2012

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING TITLE 13 OF THE LOVELAND  
MUNICIPAL CODE BY THE ADDITION OF A NEW CHAPTER 13.06  
REGARDING CROSS-CONNECTION CONTROL**

**WHEREAS**, pursuant to Article 12 of the Colorado Primary Drinking Water Regulations, it is the responsibility of the City of Loveland to protect its drinking water from the backflow of any substance into the public water supply system by instituting and enforcing a cross-connection control program; and

**WHEREAS**, to meet the City's responsibilities under Article 12, City staff recommends that the Loveland Municipal Code be amended by addition of a new Chapter 13.06 implementing a cross-connection control program; and

**WHEREAS**, on December 14, 2011, the Loveland Utilities Commission adopted a motion recommending that the City Council adopt an ordinance to amend the Loveland Municipal Code by addition of Chapter 13.06; and

**WHEREAS**, the City Council finds that the addition of Chapter 13.06 to the Loveland Municipal Code implementing a cross-connection control program is in the best interests of the rate payers of the City of Loveland and necessary for the public's health, safety, and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY  
OF LOVELAND, COLORADO:**

**Section 1.** That the Loveland Municipal Code is hereby amended by the addition of a new Chapter 13.06 to read as follows:

**Chapter 13.06**

**CROSS-CONNECTION CONTROL**

**Sections:**

- 13.06.010** **Definitions.**
- 13.06.020** **Purpose.**
- 13.06.030** **Cross-connections regulated.**
- 13.06.040** **Application and responsibilities.**
- 13.06.050** **Backflow prevention assembly requirements.**
- 13.06.060** **Containment protection.**

<b>13.06.070</b>	<b>Irrigation systems.</b>
<b>13.06.080</b>	<b>Fire systems.</b>
<b>13.06.090</b>	<b>Temporary meters.</b>
<b>13.06.100</b>	<b>Wholesale customers.</b>
<b>13.06.110</b>	<b>Mobile units.</b>
<b>13.06.120</b>	<b>Right-of-way encroachment.</b>
<b>13.06.130</b>	<b>Plumbing code.</b>
<b>13.06.140</b>	<b>Access to premises and records.</b>
<b>13.06.150</b>	<b>Testing and repairs.</b>
<b>13.06.160</b>	<b>Responsibilities of cross-connection control technicians.</b>
<b>13.06.170</b>	<b>Maintenance of assemblies.</b>
<b>13.06.180</b>	<b>Installation requirements and specifications.</b>
<b>13.06.190</b>	<b>Thermal expansion.</b>
<b>13.06.200</b>	<b>Pressure loss.</b>
<b>13.06.210</b>	<b>Parallel installation.</b>
<b>13.06.220</b>	<b>New construction.</b>
<b>13.06.230</b>	<b>Residential service connections.</b>
<b>13.06.240</b>	<b>Rental properties.</b>
<b>13.06.250</b>	<b>Retrofitting.</b>
<b>13.06.260</b>	<b>Costs of compliance.</b>
<b>13.06.270</b>	<b>Emergency suspension of service.</b>
<b>13.06.280</b>	<b>Non-emergency suspension of service.</b>
<b>13.06.290</b>	<b>Termination of service.</b>
<b>13.06.300</b>	<b>Recovery of costs.</b>
<b>13.06.310</b>	<b>Violations.</b>
<b>13.06.320</b>	<b>Falsifying information; tampering.</b>

### **13.06.010      Definitions.**

Except where specifically designated in this section, all words used in this Chapter 13.06 shall carry their customary meanings. Any word, term, or phrase not found in this section shall be determined as set forth in the Colorado Primary Drinking Water Regulations or in the Colorado Cross-Connection Control Manual, if not found in such regulations.

- A. “Air gap” means a physical separation between the free-flowing end of a potable water supply pipeline and the overflow rim of an open or non-pressure-receiving vessel. To be an “approved air gap,” the separation must be at least twice the diameter of the inlet piping (supply pipe) measured vertically, and never be less than one inch.
- B. “Approved backflow prevention assembly,” “backflow assembly,” or “assembly” means an assembly to counteract backpressures or prevent backsiphonage. This assembly must be approved by the American Society of Sanitary Engineers (“ASSE”) or the University of Southern California (“USC”) and must be purchased and installed as a complete unit including shut-off valves and test cocks.
- C. “Auxiliary supply” means any water source or system other than the city’s water.
- D. “Backflow” means the flow of water or other liquids, gases, or solids from any source back into the public water system in the opposite direction of its intended flow.
- E. “Certified Cross-Connection Control Technician” or “CCCCT” means a person holding a valid CCCCT certification issued in accordance with the Colorado Department of Public

Health and Environment Water Quality Control Division.

- F. “Closed system” means any water system or portion of a water system in which water is closed to atmosphere.
- G. “Colorado Cross-Connection Control Manual” means the latest version of the manual published by the Backflow Prevention Education Council of Colorado and is endorsed by the State addressing cross-connection control practices, which shall be used as a guidance document for the water supplier in implementing a Cross-Connection Control Program.
- H. “Colorado Primary Drinking Water Regulations” or “CPDWR” means the most recent edition of the regulations adopted by the Colorado Department of Public Health and Environment Water Quality Control Division.
- I. “Containment” means a method of protecting the public water system by the installation of an approved air gap or approved backflow prevention assembly at the point of service (end of the city’s service pipe) to separate the customer’s plumbing system from the city’s distribution system.
- J. “Contamination” means the entry into or presence in a public water system of any substance which may be harmful to health and/or quality of the water.
- K. “Cross-connection” means any physical arrangement where the public water system is connected, directly or indirectly, actual or potential, with any other non-potable water system or auxiliary system, well, sewer, drain conduit, swimming pool, storage reservoir, plumbing fixture, swamp cooler, or any other device which contains, or may contain, contaminated or polluted water, sewage, used water, or other liquid of unknown or unsafe quality which may be capable of imparting contamination or pollution to the public water system as a result of backflow. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices, or other temporary or permanent devices through which, or because of which, backflow may occur are considered to be cross-connections.
- L. “Degree of hazard” means the low or high hazard classification that shall be attached to all actual or potential cross-connections.
- M. “Director” means the director of the water and power department or his designee.
- N. “Double check valve backflow prevention assembly,” “double check assembly,” “double check,” “DCVA,” or “DC” means an assembly which consists of two independently operating check valves which are spring-loaded or weighted. This assembly comes complete with a shut-off valve on each side of the checks, as well as test cocks.
- O. “High hazard” means the classification assigned to an actual or potential cross-connection that potentially could allow a substance that may cause illness or death to backflow into the public water system.
- P. “In-premises protection” means a method of protecting the health of consumers served by the customer’s plumbing system (*i.e.* located within the property lines of the customer’s premises) by the installation of an approved air gap or backflow prevention assembly at the point of hazard.
- Q. “Low hazard” means the classification assigned to an actual or potential cross-connection that could allow a substance that may be objectionable, but not hazardous to one’s health, to backflow into the public water system.
- R. “Mobile unit” means a unit connecting to the public water system through a hydrant, hose bibb, or other appurtenance of a permanent nature that is part of the public water system. Examples include, but are not limited to, the following: water trucks, pesticide applicator vehicles, chemical mixing units or tanks, waste or septic hauler trucks or units, sewer

cleaning equipment, carpet or steam cleaning equipment, rock quarry or asphalt/concrete batch plants, or any other mobile equipment or vessel. Uses that are excluded from this definition are recreational vehicles at assigned sites or parked in accordance with city ordinances pertaining to recreational vehicles, and homeowner devices that are used by the property owner in accordance with city ordinances pertaining to the provision of water service to a premises.

- S. "Plumbing code" means the most current plumbing code adopted by the city.
- T. "Plumbing hazard" means an internal or plumbing-type cross-connection in a consumer's potable water system that may be either a pollution or a contamination-type hazard. This includes, but is not limited to, cross-connections to toilets, sinks, lavatories, wash trays, domestic washing machines, and lawn sprinkling systems. Plumbing-type cross-connections can be located in all types of structures including, but not limited to, homes, manufactured homes, apartment houses, hotels, and commercial or industrial establishments.
- U. "Pollution hazard" means an actual or potential threat to the physical properties of the public water system or the potability of the public's or the consumer's potable water system but which would not constitute a health or system hazard. The maximum degree of intensity of pollution to which the public water system could be degraded under this definition would cause a nuisance or be aesthetically objectionable or could cause minor damage to the public water system or its appurtenances.
- V. "Potable water supply" means any system of water supply intended or used for human consumption or other domestic use that meets all requirements established by the Safe Drinking Water Act and the CPDWR.
- W. "Premises" means any piece of property to which water is provided including, but not limited to, all improvements, mobile structures, and structures located on it.
- X. "Public water system" means that part of the water system that is owned and maintained by the city including all pipes, valves, and appurtenances up to the outlet side of the curb stop or meter connection.
- Y. "Reduced pressure principle backflow prevention assembly" or "reduced pressure backflow assembly" or "RP assembly" means an assembly containing two independently acting approved check valves together with a hydraulically-operated, mechanically independent pressure differential relief valve located between the check valves. The assembly shall include properly located test cocks and tightly closing shut-off valves at each end of the assembly.
- Z. "Specialist" means an employee or contractor of the city who meets the requirements of this Chapter 13.06 and the city's Standard Operating Procedures Manual to carry out inspections and surveys for cross-connections.
- AA. "Standard Operating Procedures Manual" or "SOP Manual" means the most recent edition of the city's Standard Operating Procedures Manual related to cross-connection control.
- AB. "Technician" means a Cross-connection Control Technician certified to test backflow assemblies.
- AC. "Thermal expansion" means the pressure created by the expansion of heated water.
- AD. "Unapproved substance" means any substance, gas, or liquid other than the city's drinking water or the city's used drinking water.
- AE. "Used water" means any water supplied by the city to a customer's property after it has passed through the service connection and is no longer under the control of the city.

**13.06.020 Purpose.**

The purpose of this Chapter 13.06 is to protect the public water system from contamination or pollution due to any existing or potential cross-connections as defined in CPDWR Article 12, or as amended, and this Chapter 13.06 which is necessary for the public's health, safety, and welfare.

**13.06.030 Cross-connections regulated.**

- A. No cross-connections shall be created, installed, used, or maintained within the territory served by the city, except in accordance with this Chapter 13.06.
- B. The specialist shall carry out or cause inspections and surveys to be carried out to determine if any actual or potential cross-connections exist. If found necessary by the specialist, an assembly commensurate with the degree of hazard will be required to be installed at the service connection or at the point of hazard. The location will be determined by the specialist.
- C. The owner, occupant, or person in control of the property shall be responsible for all cross-connection control within the premises.
- D. Notwithstanding anything in this section to the contrary, the Director of Water and Power shall be authorized to require such additional information or documentation he deems reasonably necessary, in his sole discretion, to ensure the safety of the city's water supply.

**13.06.040 Application and responsibilities.**

This Chapter 13.06 applies throughout the city and to every premises and property served by the public water system. It applies to any premises, public or private, regardless of date of connection to the public water system. Every owner, occupant, and person in control of any concerned premises is responsible for compliance with the terms and provisions contained herein.

**13.06.050 Backflow prevention assembly requirements.**

The specialist shall approve the type of backflow assembly to be installed within the area served by the city. All users shall install an approved backflow assembly commensurate with the degree of hazard determined by the specialist on each service line that is directly connected to the city's water supply system. All assemblies shall be installed within the user's potable water system between the service connection and the first branch line leading off the service line, unless it is determined by the specialist to install the assembly at an alternate location for containment protection or in-premises protection. The cross-connection shall be eliminated or an assembly shall be required by the specialist to be installed in each of the following circumstances, but the specialist is in no way limited to the following circumstances:

- A. The nature and extent of any activity on the premises, or the materials used in connection with any activity on the premises, or materials stored on the premises, could contaminate or pollute the potable water supply.
- B. Premises having any one or more cross-connections or potential cross-connections.
- C. When a cross-connection survey report form is required by the city to be filled out and returned and it has not been received by the city.
- D. Internal cross-connections are present that are not correctable.
- E. Intricate plumbing arrangements exist or plumbing subject to frequent changes is present that make it impractical to ascertain whether or not cross-connections exist.
- F. There is a repeated history of cross-connections being established or re-established.
- G. There is unduly restricted entry so that inspections and surveys for cross-connections cannot

be made with sufficient frequency to assure that cross-connections do not exist.

- H. Materials, chemicals, or other substances or apparatus are being used and if backflow occurred, contamination or pollution could result.
- I. Installation of an approved backflow prevention assembly is deemed to be necessary in the judgment of the specialist to comply with any provision of CPDWR Article 12 or this Chapter 13.06.
- J. Any premises having an auxiliary water supply.
- K. In the event an in-premises assembly that protects the distribution system has not been tested or repaired as required by CPDWR Article 12 and this Chapter 13.06, a containment assembly will be required or water service will be terminated in accordance with this Chapter 13.06.
- L. If it is determined that additions or rearrangements have been made to the plumbing system without obtaining proper permits as required by City Code.
- M. When a garden hose attachment is connected to the premises' plumbing, including, but not limited to, fertilizer applicators, pesticide applicators, and radiator flush kits.
- N. If the required building or sprinkler permits are not obtained.

#### **13.06.060 Containment protection.**

- A. Service connections to premises posing a high health cross-connection hazard shall have an approved air gap or reduced pressure backflow assembly installed for containment protection.
- B. If the specialist determines that no hazard exists for a connection serving such a premises, the requirements of subsection 13.06.060A. shall not apply.

#### **13.06.070 Irrigation systems.**

- A. All irrigation systems which are plumbed off of the main service line to the premises shall be protected in accordance with the plumbing code.
- B. All designated laterals which serve only irrigation systems shall install a reduced pressure backflow assembly or a pressure vacuum breaker assembly. These assemblies must be installed at a location established by the specialist and tested in accordance with this Chapter 13.06 and the SOP Manual.

#### **13.06.080 Fire systems.**

- A. An approved double check backflow prevention assembly shall be the minimum protection on all fire sprinkler systems using piping material that is not approved for potable water use or that does not provide for periodic flow-through. A reduced pressure backflow assembly must be installed if any solution other than the potable water can be introduced into the sprinkler system.
- B. All fire system assembly testing shall be in accordance with the Colorado Cross-Connection Control Manual, this Chapter 13.06, and the SOP Manual. Any conflict between the requirements set forth therein shall be resolved in favor of the more stringent requirement.

#### **13.06.090 Temporary meters.**

Backflow protection shall be required on temporary meters. The type of assembly shall be commensurate with the degree of hazard and shall be determined on a case-by-case basis by the specialist.

**13.06.100 Wholesale customers.**

Any customer or special water district that has a wholesale contract for water services with the city must have an active, ongoing cross-connection program. The cross-connection program must be in compliance with CPWDR Article 12 requirements pertaining to public water systems. The city reserves the right at all times to require a reduced pressure backflow assembly at the interconnect.

**13.06.110 Mobile units.**

Unless a city's designated fill station is being used, any mobile unit that uses the city's water from any premises or piping shall have an air gap or RP assembly installed. Mobile units not using the designated fill station may be subject to inspection or survey by the city to ensure compliance with this section.

**13.06.120 Right-of-way encroachment.**

- A. No person shall install or maintain a backflow prevention assembly upon or within any city right-of-way except as provided in this Section 13.06.120.
- B. The city reserves the right to require that a backflow prevention assembly be installed in the right-of-way.
- C. A backflow prevention assembly required by the city may be installed upon or within any city right-of-way only if the owner proves to the city that there is no other feasible location for installing the assembly and that installing it in the right-of-way will not interfere with traffic or utilities. The city retains the right to approve the location, height, depth, enclosure, and other requisites of the assembly prior to its installation.
- D. All permits required by the Loveland Municipal Code to perform work in the right-of-way shall be obtained.
- E. A property owner shall, at the request of the city and at the owner's expense, relocate a backflow prevention assembly which encroaches upon any city right-of-way when such relocation is necessary for street or utility construction or repairs.
- F. All city ordinances relevant to right-of-way encroachment shall be abided by.

**13.06.130 Plumbing code.**

As a condition of water service, customers shall install, maintain, and operate their piping and plumbing systems in accordance with the plumbing code.

**13.06.140 Access to premises and records.**

The specialist, authorized city employees, and persons contracted by the city to perform cross-connection inspections and surveys shall, at all reasonable times, have clear access, as defined in Section 13.02.135, to any premises within or outside the city served by the city's water utility for the purpose of inspecting, surveying, or testing any connection or potential connection to the public water system or for any other purpose whatsoever in connection with the necessary discharge of their duties and the enforcement provisions of this chapter. Said specialist, employees, and contractors shall also have access to all relevant records. If clear access to the premises or access to records is denied, a reduced pressure backflow assembly shall be required to be installed at the service connection to that premises, or service may be suspended in accordance with Section 13.06.280.

**13.06.150 Testing and repairs.**

Containment backflow prevention assemblies, or assemblies which have been identified and accepted by the city as protection for the public water system, shall be tested, and retested following repair, by a CCCCT in accordance with the requirements set forth in CPDWR Article 12, this Chapter 13.06, and the SOP Manual. Any conflict between the requirements set forth therein shall be resolved in favor of the more stringent requirement.

**13.06.160 Responsibilities of cross-connection control technicians.**

All cross-connection control technicians operating within the city shall be certified in accordance with all applicable regulations and shall comply with all requirements in this Chapter 13.06 and the SOP Manual.

**13.06.170 Maintenance of assemblies.**

Backflow prevention assemblies shall be maintained in accordance with the requirements set forth in the Colorado Cross-Connection Control Manual and the SOP Manual.

**13.06.180 Installation requirements and specifications.**

- A. Backflow prevention assemblies shall be installed in accordance with the requirements set forth in the Colorado Cross-Connection Control Manual and the SOP Manual.
- B. In the event the specialist allows a containment assembly to be installed at an alternate location, there shall be no connection between the meter and the backflow assembly.

**13.06.190 Thermal expansion.**

If a closed system has been created by the installation of a backflow prevention assembly, it shall be the responsibility of the property owner to eliminate the possibility of thermal expansion.

**13.06.200 Pressure loss.**

Any reduction in water pressure caused by the installation of a backflow assembly shall not be the responsibility of the city.

**13.06.210 Parallel installation.**

Premises where non-interruption of water supply is critical shall have two assemblies of the same type installed in parallel. They shall be sized in such a manner that either assembly will provide the minimum water requirements while the two together will provide the maximum water requirements.

**13.06.220 New construction.**

In all new non-residential buildings, an approved reduced pressure backflow assembly shall be installed on each potable water service line directly connected to the city's water system. All assemblies shall be installed within the user's potable water system between the service connection and the first branch line leading off the service line.

**13.06.230 Residential service connections.**

Any residential property that has been determined to have an actual or potential cross-connection or has violated the plumbing code or this Chapter 13.06 in any way shall be required to install an approved backflow prevention assembly in accordance with this Chapter 13.06.

**13.06.240      Rental properties.**

The property owner shall be responsible for the installation, testing, and repair of all backflow assemblies on owner's property or approved right-of-way locations. When tenants change, or if the plumbing is altered in any way, it shall be the owner's responsibility to notify the City.

**13.06.250      Retrofitting.**

Retrofitting shall be required on all service connections where an actual or potential cross-connection exists, and wherever else the specialist deems retrofitting necessary.

**13.06.260      Costs of compliance.**

All costs and expenses associated with the purchase, installation, inspection, survey, testing, replacement, maintenance, parts, and repair of the backflow assembly are the financial responsibility of the property owner.

**13.06.270      Emergency suspension of service.**

The director or his designee may, without prior notice, suspend water service to any premises when such suspension is necessary to stop the imminent threat of any actual or potential cross-connection as defined in this Chapter 13.06 and the SOP Manual.

**13.06.280      Non-emergency suspension of service.**

The director or his designee may suspend, with twenty-four hours notice, the water service to any premises where the conditions of this Chapter 13.06 or the SOP Manual have been violated.

**13.06.290      Termination of service.**

Failure on the part of any property owner to discontinue the use of all cross-connections, to physically separate cross-connections, or to abide by all the conditions of this Chapter 13.06 is sufficient cause for the immediate termination of water service by the city to the premises.

**13.06.300      Recovery of costs.**

Any property owner who violates any provision of this Chapter 13.06 shall be liable to the city for all costs and expenses incurred by the city as a result of such violation, including, without limitation, all costs and expenses related to suspending or terminating service and costs of labor, materials, and specified fees. Refusal to pay the assessed costs and expenses shall constitute a violation of this Chapter 13.06 and may result in termination of water service. All said costs and expenses shall constitute a lien upon the property where the water is used from the time of use and shall be a perpetual charge against said property until paid, and in the event the charges are not paid when due, the city clerk may certify such delinquent charges to the treasurer of Larimer County and the charges may be collected in the same manner as though they were part of the taxes.

**13.06.310      Violations.**

Any person who violates any provision of this Chapter 13.06 shall be guilty of a misdemeanor subject to the general penalty clause of the Loveland Municipal Code.

**13.06.320      Falsifying information; tampering.**

Any person who knowingly makes any false statement, representation, record, report or other

document filed or required to be maintained pursuant to this Chapter 13.06, or who falsifies, tampers with, or knowingly renders inaccurate any backflow assembly or method required under this Chapter 13.06 shall, in addition to civil and criminal penalties provided by state law, be guilty of a misdemeanor subject to the general penalty clause of the Loveland Municipal Code.

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this 6<sup>th</sup> day of March, 2012.

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Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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*Shane L. Eltes*  
Assistant City Attorney

## ATTACHMENT B



**Department of Water and Power**  
 Service Center • 200 N. Wilson Avenue • Loveland, CO 80537  
 (970) 962-3000 • (970) 962-3400 Fax • (970) 962-2620 TDD  
[www.cityofloveland.org](http://www.cityofloveland.org)

## MEMORANDUM

To: City Council  
 Through: Bill Cahill, City Manager  
 From: Steve Adams, Water and Power Director  
 Subject: Cross Connection Control Program (CCCP)  
 Date: January 19, 2012  
 Cc: Chris Matkins, Andy Tenbraak, John McGee  
 Enclosure A: *Figure 1: Containment vs. Isolation*  
 Enclosure B: *Draft CCCP Ordinance*

At the January 31, 2012 City Council Study Session, Water & Power staff will be presenting information regarding the CCCP for the City of Loveland. The primary purpose of the study session is to educate city council on the CCCP and offer recommendations on the implementation of the program.

To date, staff has presented the CCCP to the LUC during the November and December 2011 meetings and to the Construction Advisory Board (CAB) in December 2011. Both the LUC and CAB have supported the implementation of the CCCP and LUC approved a motion for City Council to approve the CCCP ordinance.

The City of Loveland is dedicated to supplying clean, safe water to its customers. When water is used improperly, creating a cross connection and the possibility of backflow, the health and safety of all the customers connected to the water system is threatened. Backflow due to improper use of water within a customer's premises could result in the contamination of the City's water supply mains. This could cause disease carrying organisms, toxic materials, or other hazardous substances to adversely affect large numbers of people. The City is taking every reasonable precaution to prevent cross connections from contaminating the water being distributed to its customers. The best protection against such occurrences is the implementation and maintenance of an effective cross connection control program (CCCP).

The City's Municipal Code Sections 13.10.302, 13.04.220, 15.08.020 and the Water and Wastewater Development standards Section 4.4.9 specifically mentions backflow prevention or cross connection control prevention. However, the City does not have an enforcement mechanism for regulating cross connection control within the City's domestic water service area. The purpose of the draft CCCP ordinance is to have an enforcement mechanism that cross connection control is implemented to the degree necessary to protect contamination of the domestic water supply within the City's service areas.

In May 2003 the Colorado Department of Public Health and Environment (CDPHE) adopted Article 12 of the Colorado Primary Drinking Water Regulations which specifically addressed Hazardous Cross Connections. This regulation requires that the City enforce cross connection control within the area of potable water service operated and maintained by the City. As part of this enforcement the City is

required to implement a program that will identify any potential hazards that exist, categorize and prioritize the degrees of hazards, require systems to install and maintain **containment devices** and enforce that proper devices are installed to eliminate the hazards. The City is also required to implement a tracking system that will notify customers with backflow devices that annual testing of the device be conducted by a Colorado Certified Technician. The City must maintain records of all inspections and maintenance performed on containment devices for a three year period. Further, a public water system is required to notify CDPHE of any cross connections within 10 calendar days following its discovery. Violations of the above requirements are subject to penalties as prescribed in sections 25.1.114 and 25.1.114.1 Colorado Revised Statues.

In May 2007 the Loveland Utilities Commission received a presentation by staff on a draft cross-connection control ordinance. However, following the presentation staff learned from other Front Range communities that they were experiencing difficulties in operating and enforcing their cross-connection control ordinances. Staff then conducted a survey of best management practices and procedures to be used in redrafting the ordinance. In September 2010, the consulting firm Backflow Management Inc. was hired to update the redrafted ordinance and assist with the development of the CCCP. City staff has been working with them since that time to develop the CCCP ordinance that is shown as Attachment B.

City staff has continued on with creating a draft cross-connection control handbook that will include guidance on how to implement the CCCP. The handbook will outline procedures for installation, testing, and maintenance of approved backflow devices. Upon approval of the regulatory driven ordinance by city council, staff will be an extensive stakeholder information process involving plumbers, irrigation companies, customers, vendors, suppliers, consultants and contractors. Feedback from these stakeholders will help finalize the handbook, educate them on the elements of the CCCP program and assist with implementation of the program.

An important element to a cross-connection control program is what approach used to control backflow from occurring. The enclosed Figure 1 shows location and use for containment and isolation backflow prevention devices. Definitions for containment and isolation are as follows:

**Containment** – Protection by containment shall mean the installation of an approved backflow prevention assembly, or method, **on the service line(s) serving any premise**, location, facility or area. Protection by containment shall be used when the potable water system may be contaminated or polluted by substances used or stored within a building or premises.

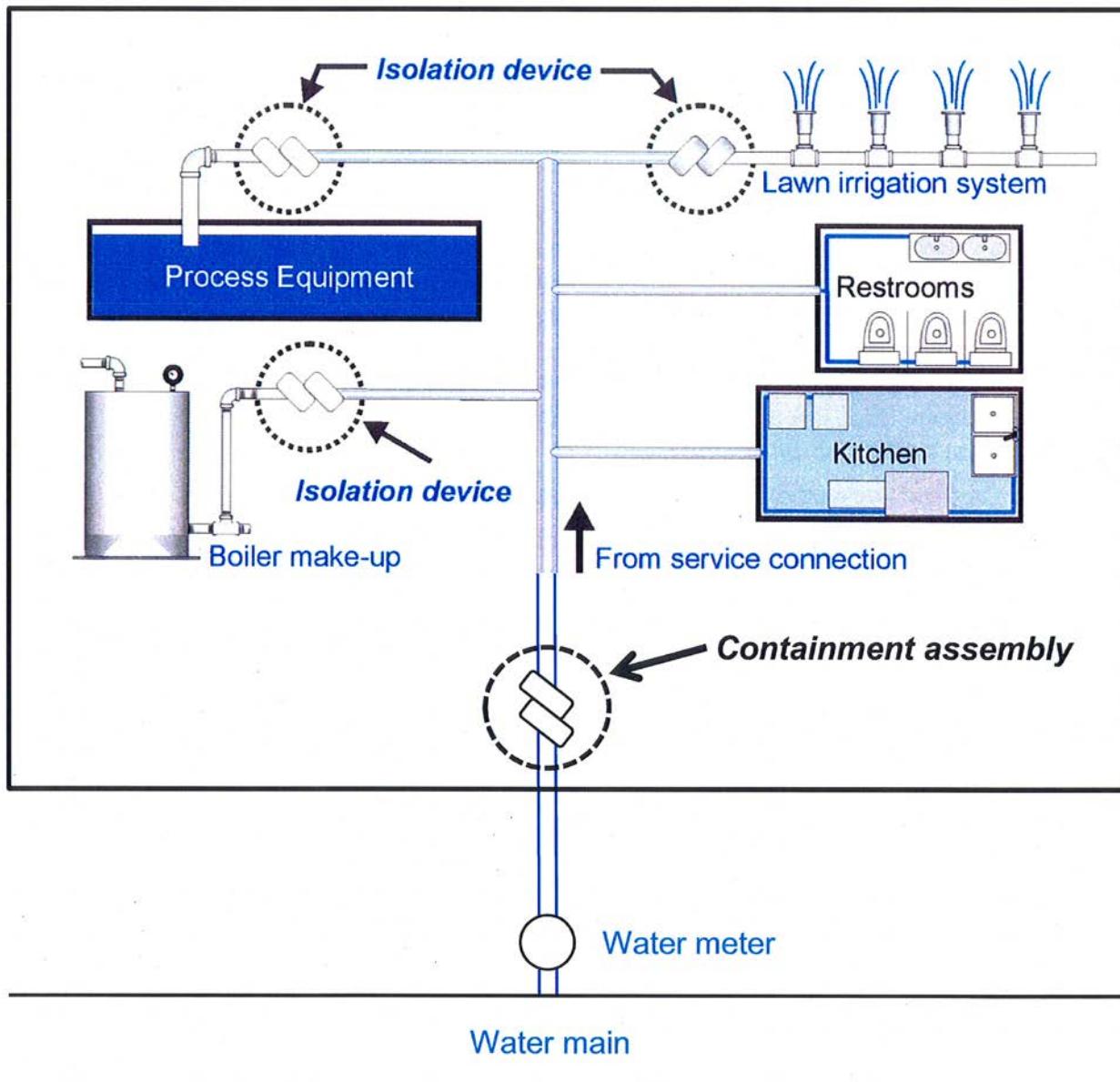
**Isolation** – The control of cross connections **within a buildings plumbing system** by the installation of an approved backflow prevention assembly or method at or near the potential sources of pollution or contamination. Plumbing codes usually specify when and where these devices are used.

The State of Colorado requires that a **containment assembly** be installed on all service connections that pose a potential health risk to the public water supply.

The CCC program will have a small financial impact on the City for implementation, tracking and surveys to identify potential cross connection hazards. The City has recently purchased special software for assisting in implementation, tracking, surveys and on-going operations of the CCC program. The 2012 O&M budget for this program is \$70,000. The budget will be reviewed each year to assess the financial impacts of the City operating and managing the program and will be updated as necessary.

## ENCLOSURE A

FIGURE 1: CONTAINMENT ASSEMBLY VS ISOLATION DEVICES





**CITY OF LOVELAND**  
**WATER & POWER DEPARTMENT**  
 200 North Wilson • Loveland, Colorado 80537  
 (970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

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<b>AGENDA ITEM:</b>	<b>5</b>
<b>MEETING DATE:</b>	3/6/2012
<b>TO:</b>	City Council
<b>FROM:</b>	Steve Adams, Water & Power Department
<b>PRESENTER:</b>	Larry Howard, Water & Power Department

---

**TITLE:**

Consideration of an ordinance on second reading enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for the purchase of units of the Colorado-Big Thompson (CBT) Project Water.

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the ordinance on second reading

**OPTIONS:**

1. Adopt the action as recommended by staff and the Loveland Utilities Commission
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

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**DESCRIPTION:**

This is an administrative action to consider an ordinance on second reading enacting a supplemental budget and appropriation to the 2012 City of Loveland budget in the amount of \$2,506,600 for purchase of Colorado-Big Thompson Project (CBT) water. This item went to Council for first reading on February 21, 2012, where Council passed it unanimously.

**BUDGET IMPACT:**

Positive  
 Negative  
 Neutral or negligible

Reserves are available in the fund for the purchase that was not appropriated in the 2012 Adopted Budget. Use of the reserves may require adjustments to future water project commitments.

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**SUMMARY:**

The City of Loveland has a long history of planning for the water supply needs of the community. Currently, two opportunities exist to purchase larger blocks of CBT at favorable market rates. Both opportunities are time-sensitive.

The first is an agreement negotiated by City staff for the purchase of 186 CBT units at \$8,100 per unit for a total of \$1,506,600. The agreement is expressly subject to this appropriation request. At the Northern Colorado Water Conservancy District ("Northern") board meeting on Friday, February 10, 2012, an application to purchase these 186 units by another party was denied. Staff had previously visited with the seller's representative, and during discussions following the denial, a purchase price was tentatively agreed to. An agreement to purchase the units for \$8,100/unit, contingent upon the appropriation of sufficient funds from reserves, is currently being drafted. The purchase must be approved by the Northern Board. The Northern Board meets next on March 9, 2012, which is the reason staff is bringing this request forward at this time.

The second opportunity is a sealed bid to be conducted by Northern for 100 CBT units, taking place March 23, 2012 at 10:00 a.m. City staff recommends that the City position itself to place a bid on the CBT units, and therefore requests that additional money be appropriated to cover this bid, or other opportunities, as well.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. An ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for the purchase of units of the Colorado-Big Thompson (CBT) Project Water.

**FIRST READING** February 21, 2012

**SECOND READING** March 6, 2012

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR THE PURCHASE OF UNITS OF THE COLORADO-BIG THOMPSON (CBT) PROJECT WATER**

**WHEREAS**, the City has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2012; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2012, as authorized by Section 11-6(a) of the Loveland City Charter.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That reserves in the amount of \$2,506,600 from undesignated fund balance in the Raw Water Fund 302 are available for appropriation. Revenues in the total amount of \$2,506,600 are hereby appropriated for purchase of units of the CBT Project Water and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
Raw Water Fund 302 - Water Purchase**

**Revenues**

Fund Balance	2,506,600
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<b>Total Revenue</b>	<b>2,506,600</b>
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**Appropriations**

302-46-316-0000-49352-W1014A Engineering	2,506,600
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<b>Total Appropriations</b>	<b>2,506,600</b>
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**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

ADOPTED this 6<sup>th</sup> day of March, 2012.

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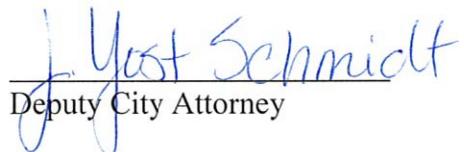
Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

  
J. Yost Schmidt  
Deputy City Attorney



**CITY OF LOVELAND**  
**DEVELOPMENT SERVICES DEPARTMENT**  
 Civic Center • 500 East 3<sup>rd</sup> Street • Loveland, Colorado 80537  
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

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**AGENDA ITEM:** 6  
**MEETING DATE:** 3/6/2012  
**TO:** City Council  
**FROM:** Greg George, Development Services Director  
**PRESENTER:** Bob Paulsen, Current Planning Manager

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**TITLE:**

A resolution adopting findings and conclusions regarding City Council's decision to uphold the Planning Commission decision on November 28, 2011 to deny an appeal filed by Bruce W. Cromwell regarding maintenance practices for open space tracts within the Garden Gate First Subdivision.

**RECOMMENDED CITY COUNCIL ACTION:**

City staff recommends the following motion for City Council action:

Move to approve A RESOLUTION ADOPTING FINDINGS AND CONCLUSIONS REGARDING APPEAL OF THE PLANNING COMMISSION'S DECISION REGARDING MAINTENANCE PRACTICES FOR THE GARDEN GATE FIRST SUBDIVISION

**OPTIONS:**

1. Adopt the action as recommended
2. Adopt a modified action (specify in the motion)
3. Refer back to staff for further development and consideration
4. Adopt a motion continuing the item to a future Council meeting

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**DESCRIPTION:**

This is a quasi-judicial action to consider a resolution adopting findings and conclusions in support of the decision made by City Council on February 7, 2012 to deny an appeal of a decision by Planning Commission to deny an appeal of an administrative decision by the Director of Development Services addressing maintenance of open space tracts within the Garden Gate neighborhood. The director's decision was an interpretation of the Final Development Plan for Garden Gate First Subdivision Planned Unit Development.

**BUDGET IMPACT:**

Positive  
 Negative  
 Neutral or negligible

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**SUMMARY:**

After receiving all information and testimony from the appellant, City staff and the public, City Council voted 9-0 to uphold the Planning Commission decision and deny the appeal. Pursuant to Section 18.80.050.C of the Municipal Code, City Council must adopt findings and conclusions in support of its decision within 30 days of said action.

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REVIEWED BY CITY MANAGER:



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**LIST OF ATTACHMENTS:**

- A. Resolution

## **RESOLUTION #R-19-2012**

### **A RESOLUTION ADOPTING FINDINGS AND CONCLUSIONS REGARDING APPEAL OF THE PLANNING COMMISSION'S DECISION REGARDING MAINTENANCE PRACTICES FOR THE GARDEN GATE FIRST SUBDIVISION**

**WHEREAS**, the Garden Gate First Subdivision located in southeast Loveland (the “Subdivision”) encompasses approximately 69 acres and includes 181 single family homes; and

**WHEREAS**, the Subdivision is zoned Planned Unit Development and is subject to a Final Development Plan approved by the City on September 30, 2004 (the “FDP”); and

**WHEREAS**, the FDP sets forth development parameters for the improved and natural environments within the Subdivision, including requirements governing the landscaping of open space tracts now owned by the Garden Gate Homeowners’ Association (the “HOA”); and

**WHEREAS**, the FDP includes requirements governing the specific open space, wetlands, and/or natural areas located in the southeastern portion of the Subdivision along either side of the Farmers’ Ditch, the detention facility at the extreme southeastern corner of the Subdivision (next to a Platte River Power Authority substation), and along the south perimeter of the Subdivision, all of which are generally depicted on **Exhibit A** attached hereto and incorporated herein by this reference (the “Specified Open Space Tracts”); and

**WHEREAS**, the City received citizen complaints that the HOA was not maintaining the Specified Open Space Tracts in accordance with the FDP and Chapter 7.18 of the Loveland Municipal Code regarding weed control (the “Municipal Weed Ordinance”) and the HOA requested clarification of its maintenance responsibilities for the Specified Open Space Tracts under the FDP from the Director of Development Services (“Director”); and

**WHEREAS**, on September 2, 2011, the Director issued his “Determination of Maintenance Practices for Designated Open Space Lands within the Garden Gate First Subdivision” (the “Director’s Decision”); and

**WHEREAS**, pursuant Code Section 18.80.040, Mr. Bruce W. Cromwell, a resident of the Subdivision and a party-in-interest, filed a timely notice of appeal of the Director’s Decision with the Loveland Planning Commission (the “Commission”); and,

**WHEREAS**, pursuant to Code Section 18.80.040.D and after due notice had been given, the Commission held a *de novo* public hearing on November 28, 2011 regarding the appeal of the Director’s Decision; and,

**WHEREAS**, at the public hearing the recommendations of the Current Planning Division as set forth in the Planning Commission Agenda Item No. 2 dated November 28, 2011 and all attachments thereto (the “Staff Commission Report”) regarding the Director’s Decision were

received and duly considered by the Commission, as was testimony from the appellant, Bruce W. Cromwell, representatives of the HOA, and other residents of the Subdivision; and

**WHEREAS**, at the close of the public hearing on November 28, 2011, the Commission adopted a motion denying the appeal, upholding the Director's Decision, and concluding that the Director properly interpreted and applied the applicable provisions of the Loveland Municipal Code subject to the condition that noxious weeds must be controlled in the Specified Open Space Tracts (the "Commission Decision"); and

**WHEREAS**, the Commission Decision was based on the findings set forth in Section VI of the Staff Commission Report; and

**WHEREAS**, pursuant to Code Section 18.80..050, Mr. Bruce Cromwell, a resident of the Subdivision and a party-in-interest, filed a timely notice of appeal of the Commission Decision to the City Council on December 6, 2011, on the grounds that the Director and the Commission failed to properly interpret and apply relevant provisions of the Municipal Code or other law as contemplated by Code Section 18.80.030 (the "Appeal"); and

**WHEREAS**, pursuant to Code Section 18.80.050.D and after due notice had been given, City Council held a *de novo* public hearing on February 7, 2012 regarding the Appeal, at which the recommendations of the Current Planning Division as set forth in Planning Staff Report dated February 7, 2012 and all attachments thereto (the "Staff Report") regarding the Appeal were received and duly considered by the Council, as was testimony from the appellant, Bruce W. Cromwell, representatives of the HOA, and other residents of the Subdivision; and

**WHEREAS**, City Council considered the Appeal, the Staff Report, and all testimony and evidence received at the public hearing in light of the intent and objectives of Chapter 18.41 of the Loveland Municipal Code and the FDP and determined that the Appeal should be denied and the Commission Decision should be upheld.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That the City Council hereby finds that the Commission Decision to uphold the Director's Decision subject to condition that noxious weeds must be controlled in the Specified Open Space Tracts, was a proper interpretation and application of the approved FDP and the Municipal Weed Ordinance.

**Section 2.** That the City Council has concluded, on the basis of the findings set forth herein, that the Appeal is hereby denied, the Commission Decision is hereby upheld, and therefore the Director's Decision is upheld, subject to the condition that noxious weeds must be controlled in the Specified Open Space Tracts.

**Section 3.** That as of the date set forth below and in accordance with Code Section 18.80.050.D, this Resolution shall constitute the written findings and conclusions and final decision of the City Council with respect to the Appeal for purposes of any appeal of the City

Council's decision to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

**Section 4.** That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 6<sup>th</sup> day of March, 2012.

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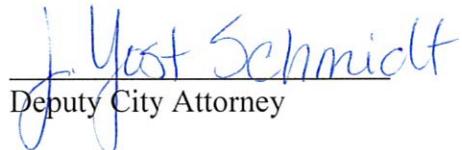
Cecil A. Gutierrez, Mayor

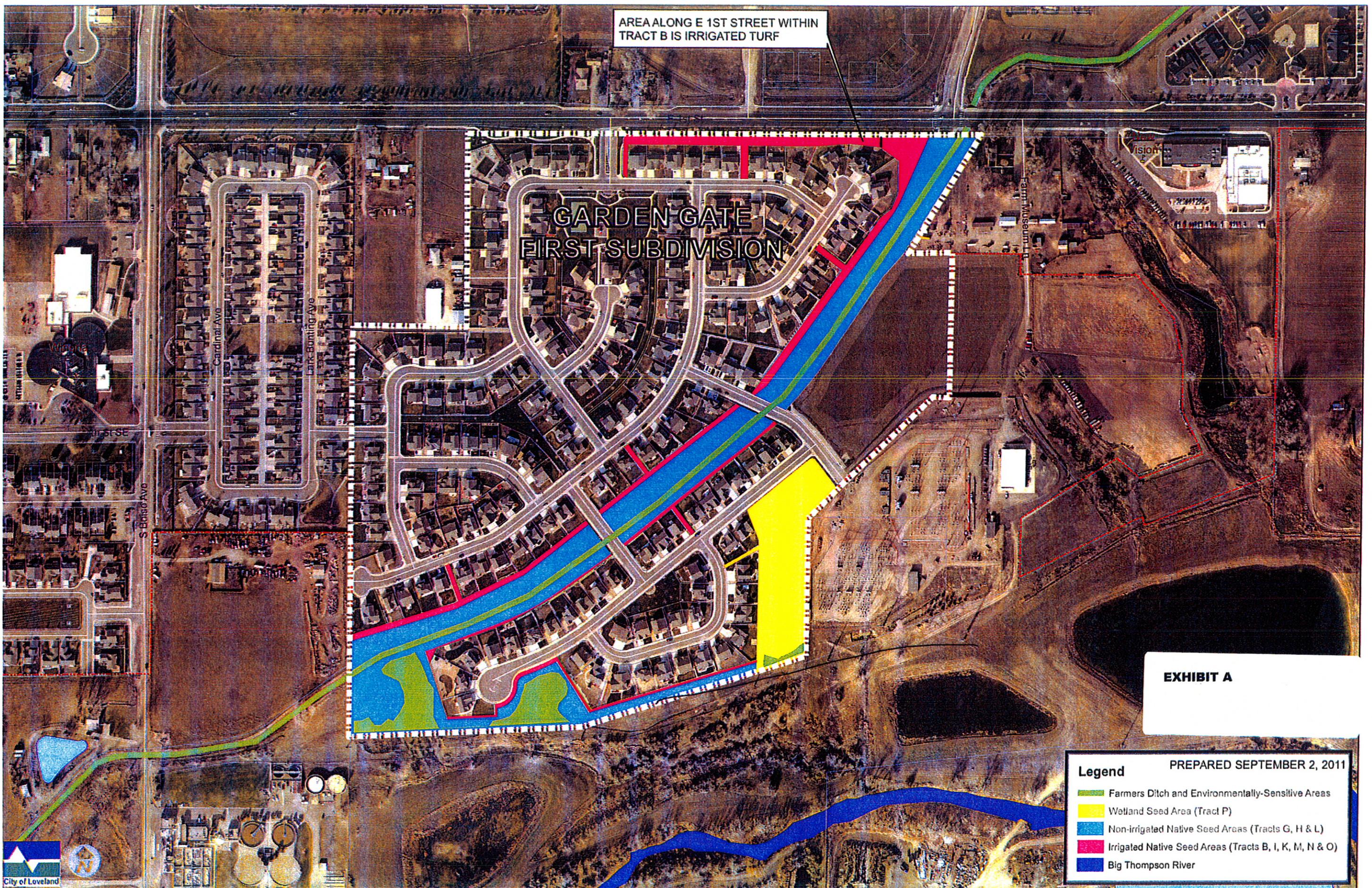
ATTEST:

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City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
J. Yost Schmidt  
Deputy City Attorney





**CITY OF LOVELAND**  
**HUMAN RESOURCES DEPARTMENT**  
 Civic Center • 500 East Third • Loveland, Colorado 80537  
 (970) 962-2371 • FAX (970) 962-2919 • TDD (970) 962-2620

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<b>AGENDA ITEM:</b>	7
<b>MEETING DATE:</b>	2/21/2012
<b>TO:</b>	City Council
<b>FROM:</b>	Julia Holland, Human Resources Director
<b>PRESENTER:</b>	Julia Holland

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**TITLE:**

A Resolution approving the 2012 Amended and Restated City of Loveland Police Retirement Plan

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt a motion approving the resolution as submitted

**OPTIONS:**

1. Adopt the action as recommended by Human Resources and the Police Pension Board
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

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**DESCRIPTION:**

This is an administrative matter. The Police Pension Board is requesting Council approve the attached Restated Retirement Plan to approve two substantive amendments, correct clerical errors that have occurred over the course of various plan restatements, and incorporate changes required by the IRS. The two substantive amendments are:

- (1) allow any Plan participant who has reached normal retirement age of fifty-five (55) to access his or her vested Plan balance; and
- (2) allow Plan participants to make voluntary after-tax contributions to the Plan, subject to the maximum federal limits.

**BUDGET IMPACT:**

Positive  
 Negative  
 Neutral or negligible

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**SUMMARY:**

The Police Pension Board is now requesting the following two (2) amendments to the Plan: (1) allow any Plan participant who has reached the normal retirement age of fifty-five (55) to access his or her vested Plan balance; and (2) allow Plan participants to make voluntary after-tax contributions to the Plan, subject to the maximum federal limits.

Previously, the Board (80% in favor), with the subsequent approval by at least sixty five (65%) of active Plan participants, voted in favor of the following proposed Plan amendments: (1) allow any Plan participant who has reached normal retirement age of fifty-five (55) to access his or her vested Plan balance; (2) permit a Plan participant to make a withdrawal from his or her vested Plan balance, if the withdrawal qualifies as a hardship withdrawal under the Internal Revenue Code and corresponding regulations; and (3) allow Plan participants to make voluntary after-tax contributions to the Plan, subject to the maximum federal limits.

City Council reviewed these proposed amendments during its Study Session on January 24, 2012. Council gave staff direction to proceed with the proposed amendments and provide a restated plan for their approval. During the legal review of the proposed amendments it was determined that the second proposed amendment is not allowed in a 401(a) money purchase plan under IRS regulations.

Therefore, after receiving the direction from City Council and legal counsel, the Board and Human Resources are requesting that City Council approve the restated Plan attached as Exhibit A to the Resolution. The Plan includes two substantive amendments, removes language inapplicable to the Plan, corrects clerical errors that have occurred over the course of various plan restatements, and incorporates changes required by the IRS.

The two substantive Plan changes are:

- (1) allow any Plan participant who has reached normal retirement age of fifty-five (55) to access his or her vested Plan balance; and
- (2) allow Plan participants to make voluntary after-tax contributions to the Plan, subject to the maximum federal limits.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

Resolution

Exhibit A: Restated Plan

**RESOLUTION # R-20-2012****A RESOLUTION APPROVING THE 2012  
AMENDED AND RESTATED CITY OF LOVELAND POLICE RETIREMENT  
PLAN**

**WHEREAS**, pursuant to City Council's Resolution #R-46-87, the City of Loveland (the "City") is the sponsor of that certain police pension benefit plan titled, "The Principal Mutual Life Insurance Company Prototype Basic Defined Contribution Plan," as amended and restated prior to the date of this Resolution, (the "Plan"); and

**WHEREAS**, the Plan currently allows a Plan participant to access his or her Plan balance if the participant has reached normal retirement age of fifty-five (55) and is no longer a City employee; and

**WHEREAS**, the Plan also limits a participant's voluntary after-tax contributions to the Plan to no more than seven percent (7%) of his or her compensation; and

**WHEREAS**, on May 17, 2011, the City's Police Pension Board of Trustees (the "Board") voted to amend the Plan to allow any Plan participant who has reached normal retirement age of fifty-five (55) to access his or her vested Plan balance regardless of employment with the City, and to allow Plan participants to increase their voluntary after-tax contributions to the Plan, subject to the maximum federal limits (together, the "Proposed Amendments"); and

**WHEREAS**, the Board has obtained approval of the Proposed Amendments by at least sixty-five percent (65%) of active Plan participants and now seeks approval by the City; and

**WHEREAS**, City Council reviewed the Proposed Amendments at the January 24, 2011, City Council study session and directed City staff to present to Council for its consideration an amended and restated plan incorporating the Proposed Amendments; and

**WHEREAS**, the Proposed Amendments, certain federal law updates, removal of language inapplicable to the Plan, and corrections to clerical errors that have occurred since the Plan was approved by Council in 1987, have been incorporated into that certain "City of Loveland Police Retirement Plan 414(h) Plan CL2010, Restated March 1, 2012," a copy of which is attached as **Exhibit A** and incorporated by reference (the "2012 Restated Plan"); and

**WHEREAS**, City Council finds that the 2012 Restated Plan is reasonable and in the best interests of the City, its citizens and the Plan participants.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE  
CITY OF LOVELAND, COLORADO, AS FOLLOWS:**

**Section 1.** That the Plan, as originally approved in 1987, and all its amendments and restatements thereafter, are hereby ratified, approved and reaffirmed by the City Council.

Notwithstanding the foregoing, the 2012 Restated Plan is hereby approved by City Council and the Plan, as originally adopted in 1987, together with all of the said Plan's subsequent amendments and restatements thereto occurring prior to the date of this Resolution, are hereby superseded and replaced in all respects as of the effective date of this Resolution by the 2012 Restated Plan.

**Section 2.** That the City Manager is hereby authorized and directed to execute the 2012 Restated Plan on behalf of the City subject to such modifications in form or substance as the City Manager, in consultation with the City Attorney, may deem necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

**Section 3.** That this Resolution shall go into effect as of the date and time of its adoption.

ADOPTED this \_\_\_\_\_ day of March, 2012.

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Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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*Mas Garcia*  
Assistant City Attorney

A Resolution Approving the 2012 Amended and Restated City of Loveland Police Retirement Plan

Your plan is an important legal document. This sample plan has been prepared based on our understanding of the desired provisions. It may not fit your situation. You should consult with your lawyer on the plan's legal and tax implications. Neither Principal Life Insurance Company nor its agents can be responsible for the legal or tax aspects of the plan nor its appropriateness for your situation. If you wish to change the provisions of this sample plan, you may ask us to prepare new sample wording for you and your lawyer to review.

# **CITY OF LOVELAND POLICE RETIREMENT PLAN**

414(h) Plan CL2010

Restated March 1, 2012

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## PLAN EXECUTION

## INTRODUCTION

The Employer previously established a retirement plan on November 30, 1978.

The Employer is of the opinion that the plan should be changed. It believes that the best means to accomplish these changes is to completely restate the plan's terms, provisions and conditions. The restatement, effective March 1, 2012, is set forth in this document and is substituted in lieu of the prior document with the exception of any good faith compliance amendment and any model amendment. Such amendment(s) shall continue to apply to this restated plan until such provisions are integrated into the plan or such amendment(s) are superseded by another amendment.

The restated plan continues to be for the exclusive benefit of employees of the Employer. All persons covered under the plan on February 29, 2012, shall continue to be covered under the restated plan with no loss of benefits.

It is intended that the plan, as restated, shall qualify as a governmental money purchase pension plan under the Internal Revenue Code of 1986, including any later amendments to the Code.

This plan includes the statutory, regulatory, and guidance changes specified in the 2010 Cumulative List of Changes in Plan Qualification Requirements (2010 Cumulative List) contained in Internal Revenue Service Notice 2010-90 and the qualification requirements and guidance published before the issuance of such list. The provisions of this plan apply as of the effective date of the restatement unless otherwise specified.

## ARTICLE I

### FORMAT AND DEFINITIONS

#### **SECTION 1.01--FORMAT.**

Words and phrases defined in the DEFINITIONS SECTION of Article I shall have that defined meaning when used in this Plan, unless the context clearly indicates otherwise.

These words and phrases have an initial capital letter to aid in identifying them as defined terms.

#### **SECTION 1.02--DEFINITIONS.**

**Account** means, for a Participant, his share of the Plan Fund. Separate accounting records are kept for those parts of his Account resulting from:

- (a) Voluntary Contributions
- (b) Salary Reduction Contributions
- (c) Other Employer Contributions
- (d) Rollover Contributions

A Participant's Account shall be reduced by any distribution of his Vested Account and by any Forfeitures. A Participant's Account shall participate in the earnings credited, expenses charged, and any appreciation or depreciation of the Investment Fund. His Account is subject to any minimum guarantees applicable under the Annuity Contract and to any expenses associated therewith.

**Acknowledgement Form** means a form executed by an Employee, in which he acknowledges that he has been informed by the Employer that, as a condition of employment, the Employer will deduct from the Employee's Compensation, by regular payroll deductions, an amount equal to 7% of his Compensation and pay that amount to the Plan as a Contribution by the Employee. These Contributions shall be classified as "picked up" by the Employer pursuant to Code Section 414(h) and treated as an Employer Contribution. Any Employee who participates in this Plan shall be deemed to have entered into this Acknowledgement Form.

**Active Participant** means an Eligible Employee who is actively participating in the Plan according to the provisions in the ACTIVE PARTICIPANT SECTION of Article II.

**Additional Contributions** means additional contributions made by the Employer. See the EMPLOYER CONTRIBUTIONS SECTION of Article III.

**Affiliated Service Group** means any group of corporations, partnerships or other organizations of which the Employer is a part and that is affiliated within the meaning of Code Section 414(m) and the regulations thereunder. Such a group includes at least two organizations one of which is either a service organization (that is, an organization the principal business of which is performing services), or an organization the principal business of which is performing management functions on a regular and continuing basis. Such service is of a type historically performed by employees. In the case of a management organization, the Affiliated Service Group shall include organizations related, within the

meaning of Code Section 144(a)(3), to either the management organization or the organization for which it performs management functions. The term Controlled Group, as it is used in this Plan, shall include the term Affiliated Service Group.

**Alternate Payee** means any spouse, former spouse, child, or other dependent of a Participant who is recognized by a qualified domestic relations order as having a right to receive all, or a portion of, the benefits payable under the Plan with respect to such Participant.

**Annuity Contract** means the annuity contract or contracts into which the Employer enters with the Insurer for guaranteed benefits, for the investment of Contributions in separate accounts, and for the payment of benefits under this Plan.

**Annuity Starting Date** means, for a Participant, the first day of the first period for which an amount is payable as an annuity or any other form.

**Beneficiary** means the person or persons named by a Participant to receive any benefits under the Plan when the Participant dies. See the BENEFICIARY SECTION of Article X.

**Code** means the Internal Revenue Code of 1986, as amended.

**Compensation** means, except for purposes of the CONTRIBUTION LIMITATION SECTION of Article III, the total earnings, except as modified in this definition, from the Employer during any specified period.

"Earnings" in this definition means base wages and salaries for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includable in gross income and excluding the following:

- (a) employer contributions (other than elective contributions described in Code Section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) to a plan of deferred compensation (including a simplified employee pension described in Code Section 408(k) or a simple retirement account described in Code Section 408(p), and whether or not qualified) to the extent such contributions are not includable in the Employee's gross income for the taxable year in which contributed, and any distributions (whether or not includable in gross income when distributed) from a plan of deferred compensation (whether or not qualified);
- (b) other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includable in the gross income of the Employee and are not salary reduction amounts that are described in Code Section 125);
- (c) bonuses, commissions, overtime pay and any other special compensation; and
- (d) other items of remuneration that are similar to any of the items listed in (a) through (c) above.

Except as provided herein, Compensation for a specified period is the Compensation actually paid or made available (or if earlier, includable in gross income) during such period.

Compensation for a Plan Year shall also include Compensation paid by the later of 2 1/2 months after an Employee's Severance from Employment with the Employer maintaining the Plan or the end of the Plan Year that includes the date of the Employee's Severance from Employment with the Employer

maintaining the Plan, if the payment is regular Compensation for services during the Employee's regular working hours, and, absent a Severance from Employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer.

Any payments not described above shall not be considered Compensation if paid after Severance from Employment, even if they are paid by the later of 2 1/2 months after the date of Severance from Employment or the end of the Plan Year that includes the date of Severance from Employment.

Back pay, within the meaning of section 1.415(c)-2(g)(8) of the regulations, shall be treated as Compensation for the Plan Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included in this definition.

Compensation paid or made available during a specified period shall include amounts that would otherwise be included in Compensation but for an election under Code Section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). Compensation shall also include employee contributions "picked up" by a governmental entity and, pursuant to Code Section 414(h)(2), treated as Employer contributions.

Compensation shall include Differential Wage Payments.

For Plan Years beginning on or after January 1, 2002, the annual Compensation of each Participant taken into account in determining contributions and allocations for any determination period (the period over which Compensation is determined) shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any determination period beginning with or within such calendar year.

Provided, however, with respect to an eligible Participant, the reduced dollar limitation in the preceding paragraph does not apply to the extent that the amount of Compensation allowed to be taken into account under the Plan is reduced below the amount that was allowed to be taken into account under the Plan as in effect on July 1, 1993. For this purpose, "eligible Participant" means an individual who first became a Participant in the Plan during a Plan Year beginning before the first Yearly Date in 1996.

If a determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction. The numerator of the fraction is the number of months in the short determination period, and the denominator of the fraction is 12.

If Compensation for any prior determination period is taken into account in determining a Participant's contributions or allocations for the current Plan Year, the Compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that determination period. For this purpose, in determining contributions and allocations in Plan Years beginning on or after January 1, 2002, the annual compensation limit in effect for determination periods beginning before that date is \$200,000.

Compensation means, for a Leased Employee, Compensation for the services the Leased Employee performs for the Employer, determined in the same manner as the Compensation of Employees who are not Leased Employees, regardless of whether such Compensation is received directly from the Employer or from the leasing organization.

**Contingent Annuitant** means an individual named by the Participant to receive a lifetime benefit after the Participant's death in accordance with a survivorship life annuity.

**Continuous Service** means, for an Employee, any period of uninterrupted service with the Employer as such period is defined by the Employer's policies.

For purposes of this definition, no interruption in service will occur because of approved periods of absence from the Employer due to temporary lay-off; leave of absence (not to exceed one year), a temporary absence due to illness or injury, pregnancy, or disability.

When necessary, the Employer shall use uniform, nondiscriminatory guidelines for determining an approved leave of absence.

**Contribution Date** means the date on which Employer Contributions are calculated. Employer Contributions shall be calculated for the Employer's payroll period.

**Contributions** means Employer Contributions, Participant Contributions, and Rollover Contributions as set out in Article III, unless the context clearly indicates only specific contributions are meant.

**Designated Beneficiary** means the individual who is designated by the Participant (or the Participant's surviving spouse) as the Beneficiary of the Participant's interest under the Plan and who is the designated beneficiary under Code Section 401(a)(9) and section 1.401(a)(9)-4 of the regulations.

**Differential Wage Payments** means any payments which are made by an Employer to an individual with respect to any period during which the individual is performing Qualified Military Service while on active duty for a period of more than 30 days, and represents all or a portion of the wages the individual would have received from the Employer if the individual were performing service for the Employer.

**Direct Rollover** means a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

**Distributee** means an Employee or former Employee. In addition, the Employee's (or former Employee's) surviving spouse and the Employee's (or former Employee's) spouse or former spouse who is the Alternate Payee under a qualified domestic relations order, as defined in Code Section 414(p), are Distributees with regard to the interest of the spouse or former spouse.

**Early Retirement Date** means the first day of any month before a Participant's Normal Retirement Date that the Participant selects for the start of his retirement benefits. This day shall be on or after the date he has a Severance from Employment and the date he meets the following requirement(s):

(a) He has completed five years of Continuous Service.

**Eligible Employee** means any Employee of the Employer who is a Police Officer pursuant to C.R.S. Section 16-2.5-105, but shall not include those Employees of the Employer hired as community services officers.

**Eligible Retirement Plan** means an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), for taxable years beginning on or after January 1, 2008, an individual

retirement plan described in Code Section 408A(b) subject to any limitations described in Code Section 408A(c), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), or a qualified plan described in Code Section 401(a), that accepts the Distributee's Eligible Rollover Distribution. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the Alternate Payee under a qualified domestic relations order, as defined in Code Section 414(p).

**Eligible Rollover Distribution** means any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's Designated Beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); (iii) any hardship distribution; (iv) the portion of any other distribution(s) that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and (v) any other distribution(s) that is reasonably expected to total less than \$200 during a year.

A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. However, such portion may be transferred only to (i) an individual retirement account or individual retirement annuity described in Code Section 408(a) or (b); (ii) for taxable years beginning on or after January 1, 2007, a qualified plan (defined contribution or defined benefit) or an annuity contract described in Code Section 403(b) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable; or (iii) for taxable years beginning on or after January 1, 2008, an individual retirement plan described in Code Section 408A(b) subject to any limitations in Code Section 408A(c) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable.

**Employee** means an individual who is employed by the Employer.

The term Employee shall include any individual receiving Differential Wage Payments.

**Employer** means, except for purposes of the CONTRIBUTION LIMITATION SECTION of Article III, City of Loveland.

**Employer Contributions** means

Salary Reduction Contributions  
Additional Contributions

as set out in Article III, unless the context clearly indicates only specific contributions are meant.

**Entry Date** means the date an Employee first enters the Plan as an Active Participant. See the ACTIVE PARTICIPANT SECTION of Article II.

**Forfeiture** means the part, if any, of a Participant's Account that is forfeited. See the FORFEITURES SECTION of Article III.

**Forfeiture Date** means, as to a Participant, the date the Participant has a Severance from Employment.

This is the date on which the Participant's Nonvested Account will be forfeited.

**Inactive Participant** means a former Active Participant who has an Account. See the INACTIVE PARTICIPANT SECTION of Article II.

**Insurer** means Principal Life Insurance Company or the insurance company or companies named by the Employer.

**Investment Fund** means the total of Plan assets, excluding the guaranteed benefit policy portion of any Annuity Contract.

The Investment Fund shall be valued at current fair market value as of the Valuation Date. The valuation shall take into consideration investment earnings credited, expenses charged, payments made, and changes in the values of the assets held in the Investment Fund.

The Investment Fund shall be allocated at all times to Participants, except as otherwise expressly provided in the Plan. The Account of a Participant shall be credited with its share of the gains and losses of the Investment Fund. That part of a Participant's Account invested in a funding arrangement that establishes one or more accounts or investment vehicles for such Participant thereunder shall be credited with the gain or loss from such accounts or investment vehicles. The part of a Participant's Account that is invested in other funding arrangements shall be credited with a proportionate share of the gain or loss of such investments. The share shall be determined by multiplying the gain or loss of the investment by the ratio of the part of the Participant's Account invested in such funding arrangement to the total of the Investment Fund invested in such funding arrangement.

**Investment Manager** means any fiduciary (other than a trustee)

- (a) who has the power to manage, acquire, or dispose of any assets of the Plan;
- (b) who (i) is registered as an investment adviser under the Investment Advisers Act of 1940; (ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of section 203A(a) of such Act, is registered as an investment adviser under the laws of the state (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time it last filed the registration form most recently filed by it with such state in order to maintain its registration under the laws of such state, also filed a copy of such form with the Secretary of Labor, (iii) is a bank, as defined in that Act; or (iv) is an insurance company qualified to perform services described in subparagraph (a) above under the laws of more than one state; and
- (c) who has acknowledged in writing being a fiduciary with respect to the Plan.

**Late Retirement Date** means the first day of any month that is after a Participant's Normal Retirement Date and on which retirement benefits begin. If a Participant continues to work for the Employer after his Normal Retirement Date, his Late Retirement Date shall be the earliest first day of the month on or after the date he has a Severance from Employment. An earlier Retirement Date may apply if the Participant so elects.

**Nonvested Account** means the excess, if any, of a Participant's Account over his Vested Account.

**Normal Form** means a single life annuity with installment refund.

**Normal Retirement Date** means the earliest first day of the month on or after the date the Participant reaches his 55th birthday. Unless otherwise provided in this Plan, a Participant may elect to receive a distribution of his Vested Account on or after his Normal Retirement Date even if there is no Severance from Employment. See Section 5.03—VESTED BENEFITS of Article V.

**Occupational Disability** means a disability resulting in an incapacity to perform assigned duties and which disability, with reasonable medical probability, will exist for at least one year. Assigned duties mean those specific tasks or jobs designated by the Employer for a particular position within a job classification. The term shall not include the duties of a Participant's rank or grade which the Participant is not actually required to perform in the position which he occupies.

**Participant** means either an Active Participant or an Inactive Participant.

**Participant Contributions** means Voluntary Contributions as set out in Article III.

**Period of Military Duty** means, for an Employee

- (a) who served as a member of the armed forces of the United States, and
- (b) who was reemployed by the Employer at a time when the Employee had a right to reemployment in accordance with seniority rights as protected under Chapter 43 of Title 38 of the U.S. Code,

the period of time from the date the Employee was first absent from active work for the Employer because of such military duty to the date the Employee was reemployed.

**Plan** means the retirement plan of the Employer set forth in this document, including any later amendments to it.

**Plan Administrator** means the person or persons who administer the Plan.

The Plan Administrator is the Police Board, as established by resolution of the Employer.

**Plan Fund** means the total of the Investment Fund and the guaranteed benefit policy portion of any Annuity Contract. The Investment Fund shall be valued as stated in its definition. The guaranteed benefit policy portion of any Annuity Contract shall be determined in accordance with the terms of the Annuity Contract and, to the extent that such Annuity Contract allocates contract values to Participants, allocated to Participants in accordance with its terms. The total value of all amounts held under the Plan Fund shall equal the value of the aggregate Participants' Accounts under the Plan.

**Plan Year** means a period beginning on a Yearly Date and ending on the day before the next Yearly Date.

**Qualified Military Service** means any service in the uniformed services (as defined in Chapter 43 of Title 38 of the U.S. Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

**Reentry Date** means the date a former Active Participant reenters the Plan. See the ACTIVE PARTICIPANT SECTION of Article II.

**Retirement Date** means the date a retirement benefit will begin and is a Participant's Early, Normal, or Late Retirement Date, as the case may be.

**Rollover Contributions** means the Rollover Contributions that are made by an Eligible Employee or an Inactive Participant according to the provisions of the ROLLOVER CONTRIBUTIONS SECTION of Article III.

**Salary Reduction Contributions** means mandatory employee contributions "picked up" by the Employer pursuant to Code Section 414(h) and treated as Employer Contributions. These Contributions are not available to the Participant as current income, and the Participant has no discretion to receive them as such because they are made as a condition of employment.

**Severance from Employment** means, except for purposes of the CONTRIBUTION LIMITATION SECTION of Article III, an Employee has ceased to be an Employee. The Plan Administrator shall determine if a Severance from Employment has occurred in accordance with section 1.401(k)-1(d)(2) of the regulations.

**Totally and Permanently Disabled** means that a Participant is unable to engage in any substantial gainful activity by reason of a medically determined physical or mental impairment that can be expected to result in death or which has lasted or can be expected to be of long-continued and indefinite duration. Proof of the existence of such disability will be in such form and manner as the Secretary of the Treasury may require.

**Valuation Date** means the date on which the value of the assets of the Investment Fund is determined. The value of each Account that is maintained under this Plan shall be determined on the Valuation Date. In each Plan Year, the Valuation Date shall be the last day of the Plan Year. At the discretion of the Plan Administrator or Insurer (whichever applies) and in a nondiscriminatory manner, assets of the Investment Fund may be valued more frequently. These dates shall also be Valuation Dates.

**Vested Account** means the vested part of a Participant's Account. The Participant's Vested Account is equal to that part of his Account resulting from Contributions that were 100% vested when made before his Vesting Percentage is 100% and is equal to his Account when his Vesting Percentage is 100%.

**Vesting Percentage** means the percentage used to determine the nonforfeitable portion of a Participant's Account attributable to Employer Contributions that were not 100% vested when made.

A Participant's Vesting Percentage is shown in the following schedule opposite the number of whole years of his Vesting Service.

VESTING SERVICE (whole years)	VESTING PERCENTAGE
Less than 5	0
5 or more	100

The Vesting Percentage for a Participant who is an Employee on or after his Normal Retirement Date or the date he meets the requirement(s) for an Early Retirement Date shall be 100%. The Vesting Percentage for a Participant who is an Employee on the date he dies shall be 100%. The Vesting Percentage for a Participant who dies while performing Qualified Military Service shall be 100%. The Vesting Percentage for a Participant who is an Employee on the date he becomes disabled shall be 100% if such disability is subsequently determined to meet the definition of Totally and Permanently Disabled. The Vesting Percentage for a Participant who becomes disabled while performing Qualified Military Service and such disability is determined to meet the definition of Totally and Permanently Disabled shall be 100%. The Vesting Percentage for a Participant who is an Employee on the date he incurs an Occupational Disability shall be 100% if such disability is subsequently determined to meet the definition of Occupational Disability.

**Vesting Service** means the total of an Employee's Continuous Service. This total is expressed in whole years and fractional parts of a year (counting a complete month as a fractional part of a year).

However, Vesting Service is modified as follows:

Period of Military Duty included:

A Period of Military Duty shall be included as service with the Employer to the extent it has not already been credited.

**Voluntary Contributions** means contributions by a Participant that are 100% vested when made to the Plan and are not required as a condition of employment or participation, or for obtaining additional Employer Contributions. See the VOLUNTARY CONTRIBUTIONS BY PARTICIPANTS SECTION of Article III.

**Yearly Date** means January 1, 1989, and the same day of each following year. Yearly Dates before January 1, 1989, shall be determined under the provisions of the prior document.

## ARTICLE II

### PARTICIPATION

#### **SECTION 2.01--ACTIVE PARTICIPANT.**

(a) An Employee shall first become an Active Participant (begin active participation in the Plan) on the earliest date on which he is an Eligible Employee. This date is his Entry Date.

If the Plan's eligibility requirements are changed, an Employee who was an Active Participant immediately prior to the effective date of the change is deemed to satisfy the new requirements and his Entry Date shall not change.

Each Employee who was an Active Participant on the day before the effective date of this restatement (as determined in the INTRODUCTION SECTION of this Plan) shall continue to be an Active Participant if he is still an Eligible Employee on such restatement date and his Entry Date shall not change.

(b) An Inactive Participant shall again become an Active Participant (resume active participation in the Plan) on the date he again becomes an Eligible Employee. This date is his Reentry Date.

Upon again becoming an Active Participant, he shall cease to be an Inactive Participant.

(c) A former Participant shall again become an Active Participant (resume active participation in the Plan) on the date he again becomes an Eligible Employee. This date is his Reentry Date.

There shall be no duplication of benefits for a Participant because of more than one period as an Active Participant.

#### **SECTION 2.02--INACTIVE PARTICIPANT.**

An Active Participant shall become an Inactive Participant (stop accruing benefits) on the earlier of the following:

- (a) the date he ceases to be an Eligible Employee, or
- (b) the effective date of complete termination of the Plan under Article VIII.

An Employee or former Employee who was an Inactive Participant on the day before the effective date of this restatement (as determined in the INTRODUCTION SECTION of this Plan) shall continue to be an Inactive Participant on such restatement effective date. Eligibility for any benefits payable to the Participant or on his behalf and the amount of the benefits shall be determined according to the provisions of the prior document, unless otherwise stated in this document or any subsequent documents.

#### **SECTION 2.03--CESSATION OF PARTICIPATION.**

A Participant shall cease to be a Participant on the date he is no longer an Eligible Employee and his Account is zero.

## ARTICLE III

### CONTRIBUTIONS

#### **SECTION 3.01--EMPLOYER CONTRIBUTIONS.**

The Employer shall make Employer Contributions for each person who meets the requirements of this section. A person meets the requirements of this section if he was an Active Participant at any time since the last Contribution Date.

The amount of the Salary Reduction Contribution for each eligible person shall be calculated as of the Contribution Date and shall be equal to 7% of his Compensation for the Employer's payroll period ending on such date as stated in his Acknowledgement Form. Salary Reduction Contributions are 100% vested.

The amount of the Additional Contribution for each eligible person shall be calculated as of the Contribution Date and shall be equal to 11% of his Compensation for the Employer's payroll period ending on such date as stated in his Acknowledgement Form. Additional Contributions are subject to the Vesting Percentage.

The Employer Contributions calculated above for each person shall be credited to his Account when made.

A portion of the Plan assets resulting from Employer Contributions (but not more than the original amount of those Contributions) may be returned if the Employer Contributions are made because of a mistake of fact. The amount involved must be returned to the Employer within one year after the date the Employer Contributions are made by mistake of fact. Except as provided under this paragraph and in Article VIII, the assets of the Plan shall never be used for the benefit of the Employer and are held for the exclusive purpose of providing benefits to Participants and their Beneficiaries and for defraying reasonable expenses of administering the Plan.

#### **SECTION 3.02--VOLUNTARY CONTRIBUTIONS BY PARTICIPANTS.**

An Active Participant may make Voluntary Contributions in accordance with nondiscriminatory procedures set up by the Plan Administrator.

A Participant's participation in the Plan is not affected by stopping or changing Voluntary Contributions. An Active Participant's request to start, change or stop his Voluntary Contributions must be made in such manner and in accordance with such rules as the Employer may prescribe (including by means of voice response or other electronic system under circumstances the Employer permits).

Voluntary Contributions shall be credited to the Participant's Account when made.

The part of the Participant's Account resulting from Voluntary Contributions is 100% vested and nonforfeitable at all times.

#### **SECTION 3.03--ROLLOVER CONTRIBUTIONS.**

A Rollover Contribution may be made by an Eligible Employee or Inactive Participant if the following conditions are met:

- (a) The Contribution is a Participant Rollover Contribution or a direct rollover of a distribution made after December 31, 2001 from the types of plans specified below.

Direct Rollovers. The Plan will accept a direct rollover of an Eligible Rollover Distribution from (i) a qualified plan described in Code Section 401(a) or 403(a), including after-tax employee contributions and excluding any portion of a designated Roth account; (ii) an annuity contract described in Code Section 403(b), including after-tax employee contributions and excluding any portion of a designated Roth account; and (iii) an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, excluding any portion of a designated Roth account.

Participant Rollover Contributions from Other Plans. The Plan will accept a Participant contribution of an Eligible Rollover Distribution from (i) a qualified plan described in Code Section 401(a) or 403(a), excluding distributions of a designated Roth account; (ii) an annuity contract described in Code Section 403(b), excluding distributions of a designated Roth account; and (iii) an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, excluding any portion of a designated Roth account.

Participant Rollover Contributions from IRAs. The Plan will accept a Participant Rollover Contribution of the portion of a distribution from an individual retirement account or individual retirement annuity described in Code Section 408(a) or (b) that is eligible to be rolled over and would otherwise be includable in the Participant's gross income.

- (b) The Contribution is of amounts that the Code permits to be transferred to a plan that meets the requirements of Code Section 401(a).
- (c) The Contribution is made in the form of a direct rollover under Code Section 401(a)(31) or is a rollover made under Code Section 402(c) or 408(d)(3)(A) within 60 days after the Eligible Employee or Inactive Participant receives the distribution.
- (d) The Eligible Employee or Inactive Participant furnishes evidence satisfactory to the Plan Administrator that the proposed rollover meets conditions (a), (b), and (c) above.
- (e) In the case of an Inactive Participant, the Contribution must be of an amount distributed from another plan of the Employer, or a plan of a Controlled Group member.

A Rollover Contribution shall be allowed in cash only and must be made according to procedures set up by the Plan Administrator.

If the Eligible Employee is not an Active Participant when the Rollover Contribution is made, he shall be deemed to be an Active Participant only for the purpose of investment and distribution of the Rollover Contribution. Employer Contributions shall not be made for or allocated to the Eligible Employee and he may not make Participant Contributions until the time he meets all of the requirements to become an Active Participant.

Rollover Contributions made by an Eligible Employee or an Inactive Participant shall be credited to his Account. The part of the Participant's Account resulting from Rollover Contributions is 100% vested and nonforfeitable at all times. Separate accounting records shall be maintained for those parts of his Rollover Contributions consisting of (i) voluntary contributions which were deducted from the Participant's gross income

for Federal income tax purposes and (ii) after-tax employee contributions, including the portion that would not have been includable in the Participant's gross income if the contributions were not rolled over into this Plan.

## **SECTION 3.04--FORFEITURES.**

The Nonvested Account of a Participant shall be forfeited as of the Participant's Forfeiture Date.

Forfeitures shall be determined at least once during each Plan Year. Forfeitures may first be used to pay administrative expenses. Forfeitures that have not been used to pay administrative expenses shall be applied to reduce the earliest Employer Contributions made after the Forfeitures are determined. Upon their application to reduce Employer Contributions, Forfeitures shall be deemed to be Employer Contributions.

## **SECTION 3.05--CONTRIBUTION LIMITATION.**

Contributions to the Plan shall be limited in accordance with Code Section 415 and the regulations thereunder. The limitations of this section shall apply to Limitation Years beginning on or after July 1, 2007, except as otherwise provided herein.

(a) **Definitions.** For the purpose of determining the contribution limitation set forth in this section, the following terms are defined.

**Annual Additions** means the sum of the following amounts credited to a Participant's account for the Limitation Year:

- (1) employer contributions;
- (2) employee contributions; and
- (3) forfeitures.

Annual Additions to a defined contribution plan, as defined in section 1.415(c)-1(a)(2)(i) of the regulations, shall also include the following:

- (4) mandatory employee contributions, as defined in Code Section 411(c)(2)(C) and section 1.411(c)-1(c)(4) of the regulations, to a defined benefit plan;
- (5) contributions allocated to any individual medical benefit account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the Employer;
- (6) amounts attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Code Section 419(e), maintained by the Employer; and
- (7) annual additions under an annuity contract described in Code Section 403(b).

**Compensation** means wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the plan to the extent that the amounts are includable in gross income (including, but not limited to, commissions paid to salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in section 1.62-2(c) of the regulations)), and excluding the following:

- (1) employer contributions (other than elective contributions described in Code Section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) to a plan of deferred compensation (including a simplified employee pension described in Code Section 408(k) or a simple retirement account described in Code Section 408(p), and whether or not qualified) to the extent such contributions are not includable in the employee's gross income for the taxable year in which contributed, and any distributions (whether or not includable in gross income when distributed) from a plan of deferred compensation (whether or not qualified);
- (2) amounts realized from the exercise of a nonstatutory stock option (that is, an option other than a statutory stock option as defined in section 1.421-1(b) of the regulations), or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- (3) amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option;
- (4) other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includable in the gross income of the employee and are not salary reduction amounts that are described in Code Section 125); and
- (5) other items of remuneration that are similar to any of the items listed in (1) through (4) above.

Except as provided herein, Compensation for a Limitation Year is the Compensation actually paid or made available (or if earlier, includable in gross income) during such Limitation Year.

Compensation for a Limitation Year shall also include Compensation paid by the later of 2 1/2 months after an employee's Severance from Employment with the Employer maintaining the plan or the end of the Limitation Year that includes the date of the employee's Severance from Employment with the Employer maintaining the plan, if the payment is regular Compensation for services during the employee's regular working hours, or Compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a Severance from Employment, the payments would have been paid to the employee while the employee continued in employment with the Employer.

Any payments not described above shall not be considered Compensation if paid after Severance from Employment, even if they are paid by the later of 2 1/2 months after the date of Severance from Employment or the end of the Limitation Year that includes the date of Severance from Employment.

Compensation shall include Differential Wage Payments.

Back pay, within the meaning of section 1.415(c)-2(g)(8) of the regulations, shall be treated as Compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included in this definition.

Compensation paid or made available during such Limitation Year shall include amounts that would otherwise be included in Compensation but for an election under Code Section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

Compensation shall not include amounts paid as Compensation to a nonresident alien, as defined in Code Section 7701(b)(1)(B), who is not a Participant in the Plan to the extent the Compensation is excludible from gross income and is not effectively connected with the conduct of a trade or business within the United States.

**Defined Contribution Dollar Limitation** means, effective for Limitation Years beginning after December 31, 2001, \$40,000, automatically adjusted under Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin. The new limitation shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a Participant's Annual Additions for a Limitation Year cannot exceed the currently applicable dollar limitation (as in effect before the January 1 adjustment) prior to January 1. However, after a January 1 adjustment is made, Annual Additions for the entire Limitation Year are permitted to reflect the dollar limitation as adjusted on January 1.

**Employer** means the employer that adopts this Plan, and all members of a controlled group of corporations (as defined in Code Section 414(b) as modified by Code Section 415(h)), all commonly controlled trades or businesses (as defined in Code Section 414(c), as modified, except in the case of a brother-sister group of trades or businesses under common control, by Code Section 415(h)), or affiliated service groups (as defined in Code Section 414(m)) of which the adopting employer is a part, and any other entity required to be aggregated with the employer pursuant to Code Section 414(o).

**Limitation Year** means the consecutive 12-month period ending on the last day of each Plan Year, including corresponding consecutive 12-month periods before November 30, 1978. If the Limitation Year is other than the calendar year, execution of this Plan (or any amendment to this Plan changing the Limitation Year) constitutes the Employer's adoption of a written resolution electing the Limitation Year. If the Limitation Year is amended to a different consecutive 12-month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

**Maximum Annual Addition** means, for Limitation Years beginning on or after January 1, 2002, the Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year. This amount shall not exceed the lesser of:

- (1) The Defined Contribution Dollar Limitation, or
- (2) 100 percent of the Participant's Compensation for the Limitation Year.

A Participant's Compensation for a Limitation Year shall not include Compensation in excess of the limitation under Code Section 401(a)(17) that is in effect for the calendar year in which the Limitation Year begins.

The compensation limitation referred to in (2) shall not apply to an individual medical benefit account (as defined in Code Section 415(l); or a post-retirement medical benefits account for a key employee (as defined in Code Section 419A(d)(1)).

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different consecutive 12-month period, the Maximum Annual Addition will not exceed the Defined Contribution Dollar Limitation multiplied by the following fraction:

$$\frac{\text{Number of months (including any fractional parts of a month)} \\ \text{in the short Limitation Year}}{12}$$

If the Plan is terminated as of a date other than the last day of the Limitation Year, the Plan is treated as if the Plan was amended to change the Limitation Year and create a short Limitation Year ending on the date the Plan is terminated.

If a short Limitation Year is created, the limitation under Code Section 401(a)(17) shall be prorated in the same manner as the Defined Contribution Dollar Limitation.

**Predecessor Employer** means, with respect to a Participant, a former employer if the Employer maintains a plan that provides a benefit which the Participant accrued while performing services for the former employer. Predecessor Employer also means, with respect to a Participant, a former entity that antedates the Employer if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.

**Severance from Employment** means an employee has ceased to be an employee of the Employer maintaining the plan. An employee does not have a Severance from Employment if, in connection with a change of employment, the employee's new employer maintains the plan with respect to the employee.

- (b) If the Participant does not participate in another defined contribution plan, as defined in section 1.415(c)-1(a)(2)(i) of the regulations (without regard to whether the plan(s) have been terminated) maintained by the Employer, the amount of Annual Additions that may be credited to the Participant's Account for any Limitation Year shall not exceed the lesser of the Maximum Annual Addition or any other limitation contained in this Plan. If the Employer Contribution that would otherwise be contributed or allocated to the Participant's Account would cause the Annual Additions for the Limitation Year to exceed the Maximum Annual Addition, the amount contributed or allocated shall be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Annual Addition.
- (c) If, in addition to this Plan, the Participant is covered under another defined contribution plan, as defined in section 1.415(c)-1(a)(2)(i) of the regulations, (without regard to whether the plan(s) have been terminated) maintained by the Employer that provides an Annual Addition during any Limitation Year, the Annual Additions that may be credited to a Participant's Account under this Plan for any such Limitation Year will not exceed the Maximum Annual Addition, reduced by the Annual Additions credited to a Participant's Account under the other defined contribution plan(s) for the same Limitation Year. If the Annual Additions with respect to the Participant under the other defined contribution plan(s) maintained by the Employer are less than the Maximum Annual Addition, and the Employer Contribution that would otherwise be contributed or allocated to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual

Additions under all such plans and funds for the Limitation Year will equal the Maximum Annual Addition. If the Annual Additions with respect to the Participant under the other defined contribution plan(s) in the aggregate are equal to or greater than the Maximum Annual Addition, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.

(d) The limitation of this section shall be determined and applied taking into account the rules in subparagraph (e) below.

(e) Other Rules

- (1) Aggregating Plans. For purposes of applying the limitations of this section for a Limitation Year, all defined contribution plans (as defined in section 1.415(c)-1(a)(2)(i) of the regulations and without regard to whether the plan(s) have been terminated) ever maintained by the Employer and all defined contribution plans of a Predecessor Employer (in the Limitation Year in which such Predecessor Employer is created) under which a Participant receives Annual Additions are treated as one defined contribution plan.
- (2) Break-up of Affiliated Employers. The Annual Additions under a formerly affiliated plan (as defined in section 1.415(f)-1(b)(2)(ii) of the regulations) of the Employer are taken into account for purposes of applying the limitations of this section for the Limitation Year in which the cessation of affiliation took place.
- (3) Previously Unaggregated Plans. The limitations of this section are not exceeded for the first Limitation Year in which two or more existing plans, which previously were not required to be aggregated pursuant to section 1.415(f) of the regulations, are aggregated, provided that no Annual Additions are credited to a Participant after the date on which the plans are required to be aggregated if the Annual Additions already credited to the Participant in the existing plans equal or exceed the Maximum Annual Addition.
- (4) Aggregation with Multiemployer Plan. If the Employer maintains a multiemployer plan, as defined in Code Section 414(f), and the multiemployer plan so provides, only the Annual Additions under the multiemployer plan that are provided by the Employer shall be treated as Annual Additions provided under a plan maintained by the Employer for purposes of this section.

## ARTICLE IV

### INVESTMENT OF CONTRIBUTIONS

#### **SECTION 4.01--INVESTMENT OF CONTRIBUTIONS.**

The handling of Contributions and Plan assets is governed by the provisions of the Annuity Contract and any other relevant document (for the purposes of this paragraph alone, the Annuity Contract and such other documents will each be referred to as a "document" or collectively as the "documents"), duly entered into by or with regard to the Plan that govern such matters. To the extent permitted by the documents, the parties named below shall direct the Contributions for investment in any of the investment options or investment vehicles available to the Plan under or through the documents, and may request the transfer of amounts resulting from those Contributions between such investment options and investment vehicles. To the extent that a Participant who has the ability to provide investment direction fails to give timely investment direction, the amount for which no investment direction is in place shall be invested in such investment options and investment vehicles as provided in the service and expense agreement or such other documents duly entered into by or with regard to the Plan that govern such matters. If the Employer has investment direction, the Contributions shall be invested ratably in the investment options and investment vehicles available to the Plan under or through the documents. The Employer shall have investment direction for amounts that have not been allocated to Participants. To the extent an investment is no longer available, the Employer may require that amounts currently held in such investment be reinvested in other investments.

- (a) Employer Contributions other than Salary Reduction Contributions: The Participant shall direct the investment of such Employer Contributions and transfer of amounts resulting from those Contributions.
- (b) Salary Reduction Contributions: The Participant shall direct the investment of Salary Reduction Contributions and transfer of amounts resulting from those Contributions.
- (c) Participant Contributions: The Participant shall direct the investment of Participant Contributions and transfer of amounts resulting from those Contributions.
- (d) Rollover Contributions: The Participant shall direct the investment of Rollover Contributions and transfer of amounts resulting from those Contributions.

However, the Plan Administrator may delegate to the Investment Manager investment direction for Contributions and amounts which are not subject to Participant direction.

All Contributions are forwarded by the Employer to the Insurer to be deposited under the Annuity Contract.

## ARTICLE V

### BENEFITS

#### **SECTION 5.01--RETIREMENT BENEFITS.**

On a Participant's Retirement Date, his Vested Account shall be distributed to him according to the distribution of benefits provisions of Article VI and the provisions of the SMALL AMOUNTS SECTION of Article X.

#### **SECTION 5.02--DEATH BENEFITS.**

If a Participant dies before his Annuity Starting Date, his Vested Account shall be distributed according to the distribution of benefits provisions of Article VI and the provisions of the SMALL AMOUNTS SECTION of Article X.

#### **SECTION 5.03--VESTED BENEFITS.**

If an Inactive Participant's Vested Account is not payable under the SMALL AMOUNTS SECTION of Article X, he may elect, but is not required, to receive a distribution of any part of his Vested Account after he has a Severance from Employment. A distribution under this paragraph shall be a retirement benefit and shall be distributed to the Participant according to the distribution of benefits provisions of Article VI.

A Participant may elect to receive a distribution of his Vested Account on or after his Normal Retirement Date even if there is no Severance from Employment as long as he meets the requirements of this section.

If an Inactive Participant does not receive an earlier distribution, upon his Retirement Date or death, his Vested Account shall be distributed according to the provisions of the RETIREMENT BENEFITS SECTION or the DEATH BENEFITS SECTION of this article.

#### **SECTION 5.04--WHEN BENEFITS START.**

Benefits shall begin by the Participant's Required Beginning Date, as defined in the DEFINITIONS SECTION of Article VII.

#### **SECTION 5.05--WITHDRAWAL BENEFITS.**

A Participant may withdraw any part of his Vested Account resulting from Voluntary Contributions. A Participant may make only two such withdrawals in any 12-month period.

A request for withdrawal shall be made in such manner and in accordance with such rules as the Employer will prescribe for this purpose (including by means of voice response or other electronic means under circumstances the Employer permits). Withdrawals shall be a retirement benefit and shall be distributed to the Participant according to the distribution of benefits provisions of Article VI.

**SECTION 5.06--DISTRIBUTIONS UNDER QUALIFIED DOMESTIC RELATIONS ORDERS.**

The Plan specifically permits distributions to an Alternate Payee under a qualified domestic relations order as defined in Code Section 414(p), at any time, irrespective of whether the Participant has attained his earliest retirement age, as defined in Code Section 414(p), under the Plan. A distribution to an Alternate Payee before the Participant has attained his earliest retirement age is available only if the order specifies that distribution shall be made prior to the earliest retirement age or allows the Alternate Payee to elect a distribution prior to the earliest retirement age.

Nothing in this section shall permit a Participant to receive a distribution at a time otherwise not permitted under the Plan nor shall it permit the Alternate Payee to receive a form of payment not permitted under the Plan.

The benefit payable to an Alternate Payee shall be subject to the provisions of the SMALL AMOUNTS SECTION of Article X if the value of the benefit does not exceed \$5,000.

The Plan shall make payments or distributions required under this section by separate benefit checks or other separate distribution to the Alternate Payee(s).

## ARTICLE VI

### DISTRIBUTION OF BENEFITS

#### **SECTION 6.01--AUTOMATIC FORMS OF DISTRIBUTION.**

Unless an optional form of benefit is selected pursuant to an election within the election period (see the ELECTION PROCEDURES SECTION of this article), the automatic form of benefit payable to or on behalf of a Participant is determined as follows:

- (a) Retirement Benefits. The automatic form of retirement benefit for a Participant who does not die and does not select a form of distribution under Section 6.02 of this article prior to his Required Beginning Date as defined in the DEFINITIONS SECTION of Article VII shall be subject to the the REQUIRED MINIMUM DISTRIBUTIONS SECTION of Article VII.
- (b) Death Benefits. The automatic form of death benefit for a Participant who dies before his Annuity Starting Date shall be a single sum payment to the Participant's Beneficiary.

#### **SECTION 6.02--OPTIONAL FORMS OF DISTRIBUTION.**

- (a) Retirement Benefits. The optional forms of retirement benefit shall be the following: (i) a straight life annuity; (ii) single life annuities with certain periods of 5, 10, or 15 years; (iii) a single life annuity with installment refund; (iv) survivorship life annuities with installment refund and survivorship percentages of 50%, 66 2/3%, 75%, or 100%; (v) fixed period annuities for any period of whole months that is not less than 60; (vi) a fixed period installment option; and (vii) a fixed payment installment option. A single sum payment is also available.

The fixed period installment option is an optional form of benefit under which the Participant elects to receive substantially equal annual payments over a fixed period of whole years. The annual payment may be paid in annual, semi-annual, quarterly, or monthly installments as elected by the Participant. The Participant may elect to receive additional payments.

The fixed payment installment option is an optional form of benefit under which the Participant elects to receive a specified dollar amount each year. The annual payment may be paid in annual, semi-annual, quarterly, or monthly installments as elected by the Participant. The Participant may elect to receive additional payments.

Under the installment options the amount payable in the Participant's first Distribution Calendar Year, as defined in the DEFINITIONS SECTION of Article VII, must satisfy the minimum distribution requirements of Article VII for such year. Distributions for later Distribution Calendar Years must satisfy the minimum distribution requirements of Article VII for such years. If the Participant's Annuity Starting Date does not occur until his second Distribution Calendar Year, the amount payable for such year must satisfy the minimum distribution requirements of Article VII for both the first and second Distribution Calendar Years.

Election of an optional form is subject to the election provisions of the ELECTION PROCEDURES SECTION of this article and the distribution requirements of Article VII.

Any annuity contract distributed shall be nontransferable.

(b) Death Benefits. The optional forms of death benefit are a single sum payment and any annuity that is an optional form of retirement benefit.

Election of an optional form is subject to the election provisions of the ELECTION PROCEDURES SECTION of this article and the distribution requirements of Article VII.

## **SECTION 6.03--ELECTION PROCEDURES.**

The Participant or Beneficiary shall make any election under this section in writing. The Plan Administrator may require such individual to complete and sign any necessary documents as to the provisions to be made. Any election permitted under (a) and (b) below shall be subject to the election provisions of (c) below.

(a) Retirement Benefits. A Participant may elect his Beneficiary or Contingent Annuitant and may elect to have retirement benefits distributed under any of the optional forms of retirement benefit available in the OPTIONAL FORMS OF DISTRIBUTION SECTION of this article.

(b) Death Benefits. A Participant may elect his Beneficiary and may elect to have death benefits distributed under any of the optional forms of death benefit available in the OPTIONAL FORMS OF DISTRIBUTION SECTION of this article.

If the Participant has not elected an optional form of distribution for the death benefit payable to his Beneficiary, the Beneficiary may, for his own benefit, elect the form of distribution, in like manner as a Participant.

(c) Election. The Participant or Beneficiary may make an election at any time during the election period. The Participant or Beneficiary may revoke the election made (or make a new election) at any time and any number of times during the election period.

(1) Election Period for Retirement Benefits. A Participant may make an election as to retirement benefits at any time before the Annuity Starting Date.

(2) Election Period for Death Benefits. A Participant may make an election as to death benefits at any time before he dies. The Beneficiary's election period begins on the date the Participant dies and ends on the date benefits begin.

## ARTICLE VII

### REQUIRED MINIMUM DISTRIBUTIONS

#### **SECTION 7.01--APPLICATION.**

The optional forms of distribution are only those provided in Article VI. An optional form of distribution shall not be permitted unless it meets the requirements of this article. The timing of any distribution must meet the requirements of this article.

Notwithstanding the provisions of this article, a Participant or Beneficiary who would have been required to receive required minimum distributions (described in the REQUIRED MINIMUM DISTRIBUTIONS SECTION of this article) for 2009 but for the enactment of Code Section 401(a)(9)(H), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 required minimum distributions or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 required minimum distributions) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's Designated Beneficiary, or for a period of at least 10 years, will receive those required minimum distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Solely for purposes of applying the provisions of the DIRECT ROLLOVERS SECTION of Article X, required minimum distributions made for 2009, will be treated as Eligible Rollover Distributions.

#### **SECTION 7.02--DEFINITIONS.**

For purposes of this article, the following terms are defined:

**Distribution Calendar Year** means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year that contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under (b)(2) of the REQUIRED MINIMUM DISTRIBUTIONS SECTION of this article. The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

**Life Expectancy** means life expectancy as computed by use of the Single Life Table in Q&A-1 in section 1.401(a)(9)-9 of the regulations.

**Participant's Account Balance** means the Account balance as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account as of dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. The Account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

**Required Beginning Date** means, for a Participant, April 1 of the calendar year following the calendar year in which he attains age 70 1/2.

## SECTION 7.03--REQUIRED MINIMUM DISTRIBUTIONS.

(a) General Rules.

- (1) The requirements of this article shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this article apply to calendar years beginning after December 31, 2002.
- (2) All distributions required under this article shall be determined and made in accordance with the regulations under Code Section 401(a)(9), including the incidental death benefit requirement in Code Section 401(a)(9)(G), and the regulations thereunder.

(b) Time and Manner of Distribution.

- (1) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
- (2) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
  - (i) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later, except to the extent that an election is made to receive distributions in accordance with the 5-year rule under (e) below. Under the 5-year rule, the Participant's entire interest will be distributed to the Designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (ii) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, except to the extent that an election is made to receive distributions in accordance with the 5-year rule under (e) below. Under the 5-year rule, the Participant's entire interest will be distributed to the Designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (iii) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (iv) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse are required to begin, this (b)(2), other than (b)(2)(i), will apply as if the surviving spouse were the Participant.

For purposes of this (b)(2) and (d) below, unless (b)(2)(iv) above applies, distributions are considered to begin on the Participant's Required Beginning Date. If (b)(2)(iv) above applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under (b)(2)(i) above. If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under (b)(2)(i) above), the date distributions are considered to begin is the date distributions actually commence.

- (3) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with (c) and (d) below. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the regulations thereunder.
- (c) Required Minimum Distributions During Participant's Lifetime.
  - (1) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:
    - (i) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Q&A-2 in section 1.401(a)(9)-9 of the regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or
    - (ii) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Q&A-3 in section 1.401(a)(9)-9 of the regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.
  - (2) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this (c) beginning with the first Distribution Calendar Year and continuing up to, and including, the Distribution Calendar Year that includes the Participant's date of death.

(d) Required Minimum Distributions After Participant's Death.(1) Death On or After Date Distributions Begin.

- (i) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:
  - A. The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
  - B. If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
  - C. If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (ii) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) Death Before Date Distributions Begin.

- (i) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in (d)(1) above, except to the extent that an election is made to receive distributions in accordance with the 5-year rule under (e) below. Under the 5-year rule, the Participant's entire interest will be distributed to the Designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

- (ii) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (iii) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under (b)(2)(i) above, this (d)(2) will apply as if the surviving spouse were the Participant.

(e) Election of 5-year Rule. Participants or Beneficiaries may elect on an individual basis whether the 5-year rule in (b)(2) and (d)(2) above applies to distributions after the death of a Participant who has a Designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which the distribution would be required to begin under (b)(2) above if no such election is made, or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death.

## **SECTION 7.04--TEFRA SECTION 242(b)(2) ELECTIONS.**

- (a) Notwithstanding the other requirements of this article, distribution on behalf of any Participant who has made a designation under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (a section 242(b)(2) election) may be made in accordance with all of the following requirements (regardless of when such distribution commences):
  - (1) The distribution by the Plan is one that would not have disqualified such Plan under Code Section 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.
  - (2) The distribution is in accordance with a method of distribution designated by the Participant whose interest in the Plan is being distributed or, if the Participant is deceased, by a Beneficiary of such Participant.
  - (3) Such designation was in writing, was signed by the Participant or the Beneficiary, and was made before January 1, 1984.
  - (4) The Participant had accrued a benefit under the Plan as of December 31, 1983.
  - (5) The method of distribution designated by the Participant or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the Beneficiaries of the Participant listed in order of priority.
- (b) A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.
- (c) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being

made if the method of distribution was specified in writing and the distribution satisfies the requirements in (a)(1) and (5) above.

- (d) If a designation is revoked, any subsequent distribution must satisfy the requirements of Code Section 401(a)(9) and the regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code Section 401(a)(9) and the regulations thereunder, but for the section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).
- (e) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Q&A-14 and Q&A-15 in section 1.401(a)(9)-8 of the regulations shall apply.

## **SECTION 7.05--TRANSITION RULES.**

To the extent the Plan was effective before 2003, required minimum distributions were made pursuant to the TEFRA SECTION 242(b)(2) ELECTIONS SECTION of this article and (a) and (b) below:

- (a) 2000 and Before. Required minimum distributions for calendar years after 1984 and before 2001 were made in accordance with Code Section 401(a)(9) and the proposed regulations thereunder published in the Federal Register on July 27, 1987 (the 1987 Proposed Regulations).
- (b) 2001 and 2002. Required minimum distributions for calendar years 2001 and 2002 were made pursuant to the proposed regulations under Code Section 401(a)(9) published in the Federal Register on January 17, 2001 (the 2001 Proposed Regulations). Distributions were made in 2001 under the 1987 Proposed Regulations prior to June 14, 2001, and the special transition rule in Announcement 2001-82, 2001-2 C.B. 123, applied.

## **ARTICLE VIII**

### **TERMINATION OF THE PLAN**

The Employer expects to continue the Plan indefinitely but reserves the right to terminate the Plan in whole or in part at any time upon giving written notice to all parties concerned.

Upon complete termination of the Plan, the Account of each Participant shall be 100% vested and nonforfeitable as of the effective date of complete termination of the Plan. The Account of each Participant shall also be 100% vested and nonforfeitable upon complete discontinuance of Contributions as of the effective date of the amendment to cease Contributions or as determined by the Internal Revenue Service. Further, the Account of each Participant who is included in the group of Participants deemed to be affected by the partial termination of the Plan (as determined by the Plan Administrator or a governmental entity authorized to make such determination) shall be 100% vested and nonforfeitable as of the effective date of such event. The Participant's Vested Account shall continue to participate in the earnings credited, expenses charged, and any appreciation or depreciation of the Investment Fund until his Vested Account is distributed.

A Participant's Vested Account may be distributed to the Participant after the effective date of the complete termination of the Plan. A distribution under this article shall be a retirement benefit and shall be distributed to the Participant according to the provisions of Article VI. However, the fixed period and fixed payment installment options shall not be available.

If a Participant or Beneficiary is receiving payments under the fixed period or fixed payment installment option, the Vested Account shall be paid to such person in a single sum.

The Participant's entire Vested Account shall be paid in a single sum to the Participant as of the effective date of complete termination of the Plan if the Participant's Vested Account is \$5,000 or less. This is a small amounts payment. The small amounts payment is in full settlement of all benefits otherwise payable.

Upon complete termination of the Plan, no more Employees shall become Participants and no more Contributions shall be made.

The assets of this Plan shall not be paid to the Employer at any time, except that, after the satisfaction of all liabilities under the Plan, any assets remaining may be paid to the Employer. The payment may not be made if it would contravene any provision of law.

## ARTICLE IX

### ADMINISTRATION OF THE PLAN

#### **SECTION 9.01--ADMINISTRATION.**

Subject to the provisions of this article, the Plan Administrator has complete control of the administration of the Plan. The Plan Administrator has all the powers necessary for it to properly carry out its administrative duties. Not in limitation, but in amplification of the foregoing, the Plan Administrator has complete discretion to construe or interpret the provisions of the Plan, including ambiguous provisions, if any, and to determine all questions that may arise under the Plan, including all questions relating to the eligibility of Employees to participate in the Plan and the amount of benefit to which any Participant, Beneficiary, or Contingent Annuitant may become entitled. The Plan Administrator's decisions upon all matters within the scope of its authority shall be final.

Unless otherwise set out in the Plan or Annuity Contract, the Plan Administrator may delegate recordkeeping and other duties which are necessary to assist it with the administration of the Plan to any person or firm which agrees to accept such duties. The Plan Administrator shall be entitled to rely upon all tables, valuations, certificates and reports furnished by the consultant or actuary appointed by the Plan Administrator and upon all opinions given by any counsel selected or approved by the Plan Administrator.

The Plan Administrator shall receive all claims for benefits by Participants, former Participants, Beneficiaries, and Contingent Annuitants. The Plan Administrator shall determine all facts necessary to establish the right of any claimant to benefits and the amount of those benefits under the provisions of the Plan. The Plan Administrator may establish rules and procedures to be followed by claimants in filing claims for benefits, in furnishing and verifying proofs necessary to determine age, and in any other matters required to administer the Plan.

#### **SECTION 9.02--EXPENSES.**

Expenses of the Plan, to the extent that the Employer does not pay such expenses, may be paid out of the assets of the Plan provided that such payment is consistent with any law to which the Plan is subject. Such expenses include, but are not limited to, expenses for recordkeeping and other administrative services; fees and expenses of the Annuity Contract; expenses for investment education service; and direct costs that the Employer incurs with respect to the Plan. Expenses that relate solely to a specific Participant or Alternate Payee may be assessed against such Participant or Alternate Payee as provided in the service and expense agreement or such other documents duly entered into by or with regard to the Plan that govern such matters.

#### **SECTION 9.03--RECORDS.**

All acts and determinations of the Plan Administrator shall be duly recorded. All these records, together with other documents necessary for the administration of the Plan, shall be preserved in the Plan Administrator's custody.

Writing (handwriting, typing, printing), photostating, photographing, microfilming, magnetic impulse, mechanical or electrical recording, or other forms of data compilation shall be acceptable means of keeping records.

## **SECTION 9.04--DELEGATION OF AUTHORITY.**

All or any part of the administrative duties and responsibilities under this article may be delegated by the Plan Administrator to a retirement committee. The duties and responsibilities of the retirement committee shall be set out in a separate written agreement.

## **SECTION 9.05--EXERCISE OF DISCRETIONARY AUTHORITY.**

The Employer, Plan Administrator, and any other person or entity who has authority with respect to the management, administration, or investment of the Plan may exercise that authority in its/his full discretion, subject only to the duties imposed under any law to which the Plan is subject. This discretionary authority includes, but is not limited to, the authority to make any and all factual determinations and interpret all terms and provisions of the Plan documents relevant to the issue under consideration. The exercise of authority will be binding upon all persons; will be given deference in all courts of law to the greatest extent allowed under law; and will not be overturned or set aside by any court of law unless found to be arbitrary and capricious or made in bad faith.

## **SECTION 9.06--TRANSACTION PROCESSING.**

Transactions (including, but not limited to, investment directions, trades, loans, and distributions) shall be processed as soon as administratively practicable after proper directions are received from the Participant or other parties. No guarantee is made by the Plan, Plan Administrator, Insurer, or Employer that such transactions will be processed on a daily or other basis, and no guarantee is made in any respect regarding the processing time of such transactions.

Notwithstanding any other provision of the Plan, the Employer or the Plan Administrator reserves the right to not value an investment option on any given Valuation Date for any reason deemed appropriate by the Employer or the Plan Administrator.

Administrative practicality will be determined by legitimate business factors (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, force majeure, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider) and in no event will be deemed to be less than 14 days. The processing date of a transaction shall be binding for all purposes of the Plan and considered the applicable Valuation Date for any transaction.

## ARTICLE X

### GENERAL PROVISIONS

#### **SECTION 10.01--AMENDMENTS.**

The Employer may amend this Plan at any time, including any remedial retroactive changes (within the time specified by Internal Revenue Service regulations), to comply with any law or regulation issued by any governmental agency to which the Plan is subject. The Employer may correct obvious and unambiguous typographical errors and cross references that merely correct a reference but that do not in any way change the original intended meaning of the provisions. All other changes shall be made with the approval of the Employer and 65% of all Active Participants (except for changes to Contributions).

An amendment may not allow reversion or diversion of Plan assets to the Employer at any time, except as may be required to comply with any law or regulation issued by any governmental agency to which the Plan is subject.

#### **SECTION 10.02--DIRECT ROLLOVERS.**

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

A Designated Beneficiary of a Participant who is not the surviving spouse of the Participant may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of a distribution, that would be an Eligible Rollover Distribution if the Designated Beneficiary were a Distributee, paid in a Direct Rollover to an individual retirement plan established for the purposes of receiving the distribution on behalf of the Designated Beneficiary. Such individual retirement plan must be an individual retirement plan described in Code Section 408A(b), 402(c)(8)(B)(i), or 402(c)(8)(B)(ii). If such Direct Rollover is made: (i) such Direct Rollover shall be treated as an Eligible Rollover Distribution; (ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of Code Section 408(d)(3)(C)); and (iii) Code Section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan. For this purpose, certain trusts shall be treated as a Designated Beneficiary as provided in Code Section 402(c)(11)(B).

In the event of a mandatory distribution of an Eligible Rollover Distribution greater than \$1,000 in accordance with the SMALL AMOUNTS SECTION of this article (or which is a small amounts payment under Article VIII at complete termination of the Plan), if the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover or to receive the distribution directly, the Plan Administrator will pay the distribution in a Direct Rollover to an individual retirement plan designated by the Plan Administrator.

In the event of any other Eligible Rollover Distribution to a Distributee in accordance with the SMALL AMOUNTS SECTION of this article (or which is a small amounts payment under Article VIII at complete termination of the Plan), if the Distributee does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover or to receive the distribution directly, the Plan Administrator will pay the distribution to the Distributee.

## **SECTION 10.03--PROVISIONS RELATING TO THE INSURER.**

The obligations of an Insurer shall be governed solely by the provisions of the Annuity Contract. The Insurer shall not be required to perform any act not provided in or contrary to the provisions of the Annuity Contract. Each Annuity Contract when purchased shall comply with the Plan. See the CONSTRUCTION SECTION of this article.

The Insurer is not a party to the Plan, nor bound in any way by the Plan provisions. It shall not be required to look to the terms of this Plan, nor to determine whether the Employer or the Plan Administrator have the authority to act in any particular manner or to make any contract or agreement.

Until notice of any amendment or termination of this Plan has been received by the Insurer at its home office, the Insurer is and shall be fully protected in assuming that the Plan has not been amended or terminated according to the latest information which it has received at its home office.

## **SECTION 10.04--EMPLOYMENT STATUS.**

Nothing contained in this Plan gives an Employee the right to be retained in the Employer's employ or to interfere with the Employer's right to discharge any Employee.

## **SECTION 10.05--RIGHTS TO PLAN ASSETS.**

An Employee shall not have any right to or interest in any assets of the Plan upon termination of employment or otherwise except as specifically provided under this Plan, and then only to the extent of the benefits payable to such Employee according to the Plan provisions.

Any final payment or distribution to a Participant or his legal representative or to any Beneficiaries or Contingent Annuitant of such Participant under the Plan provisions shall be in full satisfaction of all claims against the Plan, the Plan Administrator, the Insurer, and the Employer arising under or by virtue of the Plan.

## **SECTION 10.06--BENEFICIARY.**

Each Participant may name a Beneficiary to receive any death benefit (other than any income payable to a Contingent Annuitant) that may arise out of his participation in the Plan. The Participant may change his Beneficiary from time to time. The Participant's Beneficiary designation and any change of Beneficiary shall be subject to the provisions of the ELECTION PROCEDURES SECTION of Article VI.

It is the responsibility of the Participant to give written notice to the Plan Administrator of the name of the Beneficiary on a form furnished for that purpose. The Plan Administrator shall maintain records of Beneficiary designations for Participants before their Retirement Dates. However, the Plan Administrator may delegate to another party the responsibility of maintaining records of Beneficiary designations. In that event, the written designations made by Participants shall be filed with such other party. If a party other than the Insurer maintains the records of Beneficiary designations and a Participant dies before his Retirement Date, such other party shall certify to the Insurer the Beneficiary designation on its records for the Participant.

If there is no Beneficiary named or surviving when a Participant dies, the Participant's Beneficiary shall be the Participant's surviving spouse, or where there is no surviving spouse, the executor or administrator of the Participant's estate.

## **SECTION 10.07--CONSTRUCTION.**

The validity of the Plan or any of its provisions is determined under and construed according to Federal law and, to the extent permissible, according to the laws of the state in which the Employer has its principal office. In case any provision of this Plan is held illegal or invalid for any reason, such determination shall not affect the remaining provisions of this Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had never been included.

In the event of any conflict between the provisions of the Plan and the terms of any Annuity Contract issued hereunder, the provisions of the Plan control.

## **SECTION 10.08--LEGAL ACTIONS.**

No person employed by the Employer; no Participant, former Participant, or their Beneficiaries; nor any other person having or claiming to have an interest in the Plan is entitled to any notice of process. A final judgment entered in any such action or proceeding shall be binding and conclusive on all persons having or claiming to have an interest in the Plan.

## **SECTION 10.09--SMALL AMOUNTS.**

If the value of the Participant's Vested Account does not exceed \$5,000, his entire Vested Account shall be distributed as of the earliest of his Retirement Date, the date he dies, or the date he has a Severance from Employment for any other reason (the date the Employer provides notice to the record keeper of the Plan of such event, if later). This is a small amounts payment.

In the event a Participant has a Severance from Employment (for any reason other than death or retirement) and does not elect to have a small amounts payment paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover or to receive the distribution directly and his Vested Account is greater than \$1,000, a mandatory distribution will be made according to the DIRECT ROLLOVERS SECTION of this article. If his Vested Account is \$1,000 or less, the Participant's entire Vested Account shall be paid directly to him.

If a small amounts payment is made on or after the date the Participant dies, the small amounts payment shall be made to the Participant's Beneficiary. If a small amounts payment is made while the Participant is living, the small amounts payment shall be made to the Participant.

The small amounts payment is in full settlement of all benefits otherwise payable.

No other small amounts payments shall be made.

## **SECTION 10.10--WORD USAGE.**

The masculine gender, where used in this Plan, shall include the feminine gender and the singular words, where used in this Plan, shall include the plural, unless the context indicates otherwise.

The words "in writing" and "written," where used in this Plan, shall include any other forms, such as voice response or other electronic system, as permitted by any governmental agency to which the Plan is subject.

**SECTION 10.11--MILITARY SERVICE.**

Notwithstanding any provision of this Plan to the contrary, the Plan shall provide contributions, benefits, and service credit with respect to Qualified Military Service in accordance with Code Section 414(u).

Beginning January 1, 2007, a Participant who dies on or after January 1, 2007 while performing Qualified Military Service is treated as having resumed and then terminated employment on account of death, in accordance with Code Section 401(a)(37) and any subsequent guidance. The survivors of such Participant are entitled to any additional benefits provided under the Plan on account of death of the Participant.

By executing this Plan, the Employer acknowledges having counseled to the extent necessary with selected legal and tax advisors regarding the Plan's legal and tax implications.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CITY OF LOVELAND

By: \_\_\_\_\_

\_\_\_\_\_  
Title

ACKNOWLEDGED as PLAN ADMINISTRATOR this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By: \_\_\_\_\_

\_\_\_\_\_  
Title



**CITY OF LOVELAND**  
CITY ATTORNEY'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2540 • FAX (970) 962-2900 • TDD (970) 962-2620

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**AGENDA ITEM:** 8  
**MEETING DATE:** 3/6/2012  
**TO:** City Council  
**FROM:** John Duval, City Attorney  
**PRESENTER:** John Duval, City Attorney

---

**TITLE:** A public hearing to consider a resolution approving a material modification to the consolidated service plan for Waterfall Metropolitan Districts Nos. 1 and 2 permitting the exclusion of certain real property from the boundaries of Waterfall Metropolitan District No. 2

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and approve the resolution

**OPTIONS:**

1. Approve the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

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**DESCRIPTION:**

This is a legislative action. Adoption of the resolution would allow the Waterfall Metropolitan District No. 2 to exclude from its boundaries a 4.41 acre parcel of land recently purchased by the Loveland Housing Authority. Since Waterfall Metropolitan District No. 2 has not yet built any public improvements nor incurred any debt, removal of the Housing Authority's property from the boundaries of the District would not have any adverse economic effect on the District or the City. In addition, since the Housing Authority's property will not be subject to real property taxes, removal of the property from the District would not affect District No. 2's future tax base.

**BUDGET IMPACT:**

Positive  
 Negative  
 Neutral or negligible

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**SUMMARY:**

In 2008, the Loveland City Council, by Resolution #R-32-2008, approved the Consolidated Service Plan for Waterfall Metropolitan Districts Nos. 1 and 2 ("Service Plan"). A boundary map of both of the Districts is attached as **Exhibit "A"** to this coversheet. Recently, a 4.41 acre parcel of land, described as Lot 1, Block 1 of the Waterfall 6<sup>th</sup> Subdivision of the City of Loveland ("the Property"), was purchased by the Loveland Housing Authority ("the Authority"). Attached as **Exhibit "B"** is an aerial map depicting the Property recently purchased by the Housing Authority. The Property was formerly used for the Crystal Rapids Water Park.

After purchasing the Property, the Authority filed with Waterfall Metropolitan District No. 2 ("District No. 2") an "Exclusion Petition" requesting that the Property be removed from the boundaries of District No. 2. A copy of the Exclusion Petition is attached as **Exhibit "C."** In response to the Authority's request for exclusion of the Property, on February 21, 2012, the Board of Directors of District No. 2 adopted a resolution approving the exclusion of real property, a copy of which resolution is attached as **Exhibit "D."** As paragraph 2.a. of District No. 2's resolution states, the Board of Director's approval of that exclusion is contingent on the City Council's approval of a material modification to the Service Plan. The Service Plan provides that any exclusion of property from the boundaries of the Districts is a material modification of the Plan that must be approved by the City Council. Therefore, Waterfall District No. 2 is requesting that the City Council approve this exclusion of the Property from the boundaries of District No. 2 by adopting the proposed Resolution.

As described in a letter dated February 26, 2012, to the City Attorney from District No. 2's attorney, Alan Pogue, a copy of which is attached as **Exhibit "E,"** District No. 2 has not constructed any public improvements nor issued any debt. And as explained in the letter, since the Property will be owned by the Authority, a governmental entity, it will not be subject to real property taxes in the future. Therefore, the exclusion of the Property from District No. 2 would not have any adverse economic effect on the District now or in the future. Exclusion of the Property will also not have any adverse economic effect on the City.

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REVIEWED BY CITY MANAGER: *William D. Calfee*

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**LIST OF ATTACHMENTS:**

Resolution

Exhibit "A" - Waterfall Metropolitan District Nos. 1 and 2 boundary map

Exhibit "B" - Aerial Map of the Property

Exhibit "C" - Exclusion Petition

Exhibit "D" - Resolution of Board of Directors of District No. 2

Exhibit "E" - Letter from Alan Pogue dated February 26, 2012

**RESOLUTION #R-21-2012****A RESOLUTION OF THE LOVELAND CITY COUNCIL APPROVING A MATERIAL MODIFICATION TO THE CONSOLIDATED SERVICE PLAN FOR WATERFALL METROPOLITAN DISTRICTS NOS. 1 AND 2 PERMITTING THE EXCLUSION OF CERTAIN REAL PROPERTY FROM THE BOUNDARIES OF WATERFALL METROPOLITAN DISTRICT NO. 2**

**WHEREAS**, pursuant to C.R.S. Section 32-1-204.5, the Loveland City Council (“City Council”) approved the Consolidated Service Plan for Waterfall Metropolitan Districts Nos. 1 and 2 (“Service Plan”) on April 1, 2008, in Resolution #R-32-2008; and

**WHEREAS**, Waterfall Metropolitan Districts Nos. 1 and 2 (the “Districts”) were formed pursuant to C.R.S. Section 32-1-101 *et seq.*, as amended, by order of the District Court for Larimer County, Colorado, and after approval of the eligible electors of the Districts at a regular election held on May 6, 2008, for the purpose of assisting in the financing and development of the area generally located in the northwest section of the intersection of Boyd Lake Avenue and U. S. Highway 34; and

**WHEREAS**, a significant portion of the property contained within the boundaries of Waterfall Metropolitan District No. 2 (“District No. 2”) has been sold to the Housing Authority of the City of Loveland, Colorado (the “Housing Authority”) and is exempt from the payment of ad valorem property taxes; and

**WHEREAS**, the property purchased by the Housing Authority is more particularly described as Lot 1, Block 1, Waterfall Sixth Subdivision to the City of Loveland, County of Larimer, State of Colorado, with a street address of 3601 E. 15<sup>th</sup> Street, Loveland, Colorado 80538 (the “Property”); and

**WHEREAS**, the Housing Authority has petitioned District No. 2 for the exclusion of the Property from the boundaries of District No. 2; and

**WHEREAS**, District No. 2 desires to exclude the Property from its boundaries and is requesting the City Council to approve the exclusion by adopting this Resolution; and

**WHEREAS**, the exclusion of the Property from the boundaries of District No. 2 represents of material modification of the Service Plan and requires City Council approval; and

**WHEREAS**, notice of a public hearing before the City Council for its consideration and approval of the material modification of the Service Plan was published in the *Loveland Reporter-Herald* on February 14, 2012, as required by law; and

**WHEREAS**, notice of the public hearing before the City Council was also mailed by first class mail, on February 10, 2012, to interested persons, defined as follows: (1) the owners of record of all property within the Districts as such owners of record are listed on the records of the Larimer County Assessor; (2) the division of local government, and (3) the governing body of all municipalities or special districts which have levied an ad valorem tax with the next preceding tax year, and which have boundaries within a radius of three (3) miles of the Districts' boundaries; and

**WHEREAS**, pursuant to the provisions of Title 32, Article 1, C.R.S., the City Council held a public hearing on the material modification of the Service Plan on March 6, 2012; and

**WHEREAS**, the City Council has considered the material modification to the Service Plan, and all other testimony and evidence presented at the hearing.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That the hearing before the City Council was open to the public; that all interested parties were heard or were given the opportunity to be heard, and that all relevant testimony and evidence submitted to the Council was considered.

**Section 2.** That the City Council hereby determines that the requirements of Sections 32-1-207 (2), C.R.S., relating to the approval of a material modification to the Service Plan; the requirements of Sections 32-1-204 (1) and (1.5), C.R.S., relating to the notice of the hearing by the City Council; and the requirements of Section 32-1-204.5, C.R.S., relating to the approval by the City Council, have been fulfilled in a timely manner.

**Section 3.** That the City Council hereby finds that the material modification to the Service Plan to exclude the Property from the boundaries of District No. 2 is in the best interests of the Districts and the City.

**Section 4.** That the City Council does hereby approve the material modification to the Service Plan to exclude the Property from the boundaries of District No. 2.

**Section 5.** That nothing herein limits the City's powers with respect to the Districts, the remaining real property within the Districts' boundaries, or the improvements to be constructed by the Districts.

**Section 6.** That the City Council's findings are based solely on the evidence presented at the public hearing and that the City has not conducted any independent investigation of the evidence.

**Section 7.** That this Resolution shall take effect on the date and at the time of its adoption by the City Council.

ADOPTED this 6<sup>th</sup> day of March, 2012.

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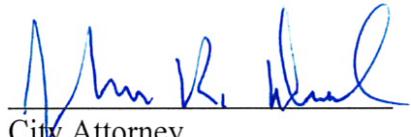
Cecil A. Gutierrez, Mayor

ATTEST:

---

City Clerk

APPROVED AS TO FORM:

  
City Attorney

**WATERFALL METROPOLITAN  
DISTRICT NOS. 1 & 2  
LOVELAND, COLORADO**

## EXHIBIT

## MAP OF DISTRICT BOUNDARIES

WATERFALL METROPOLITAN  
DISTRICT NOS. 1 & 2DISTRICTS  
DISTRICT AGREAGE

29.56 AC.

12.34 AC.

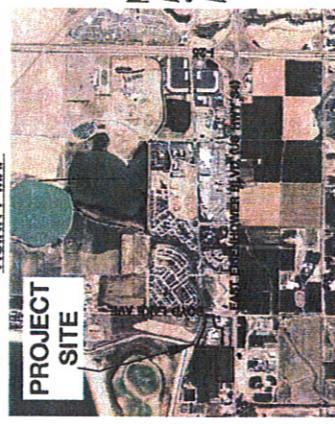
DISTRICT 1



DISTRICT 2



## VICINITY MAP

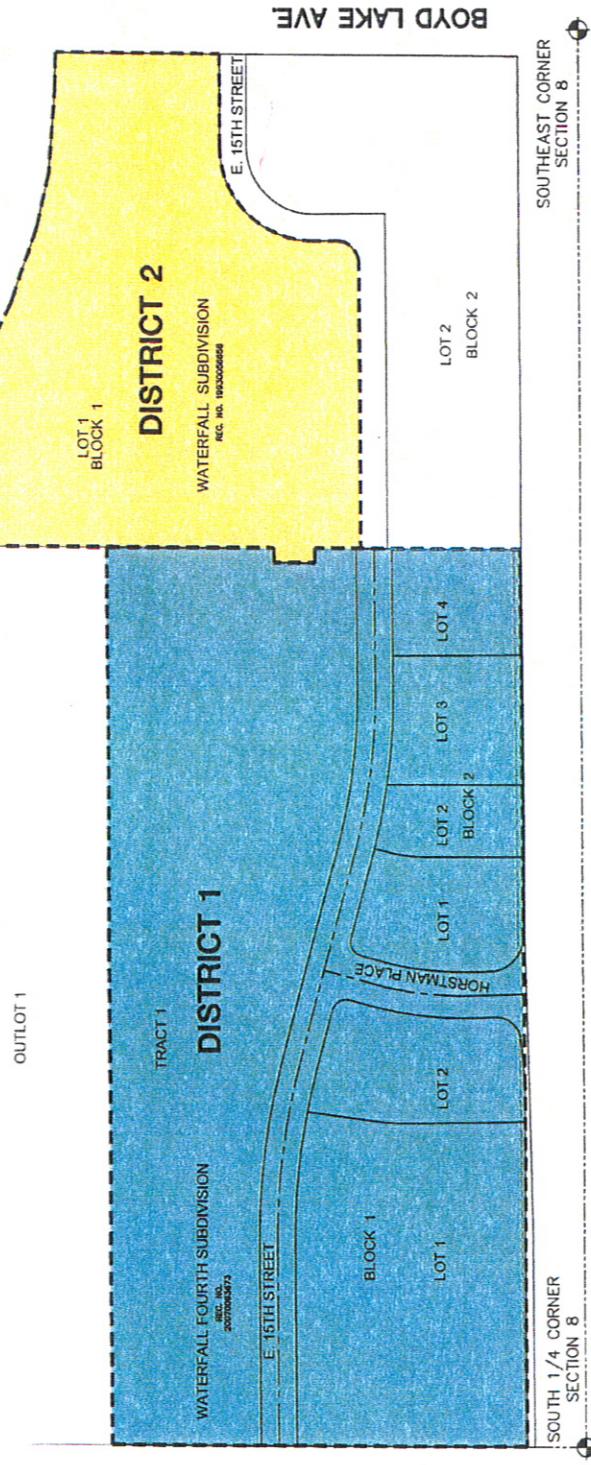


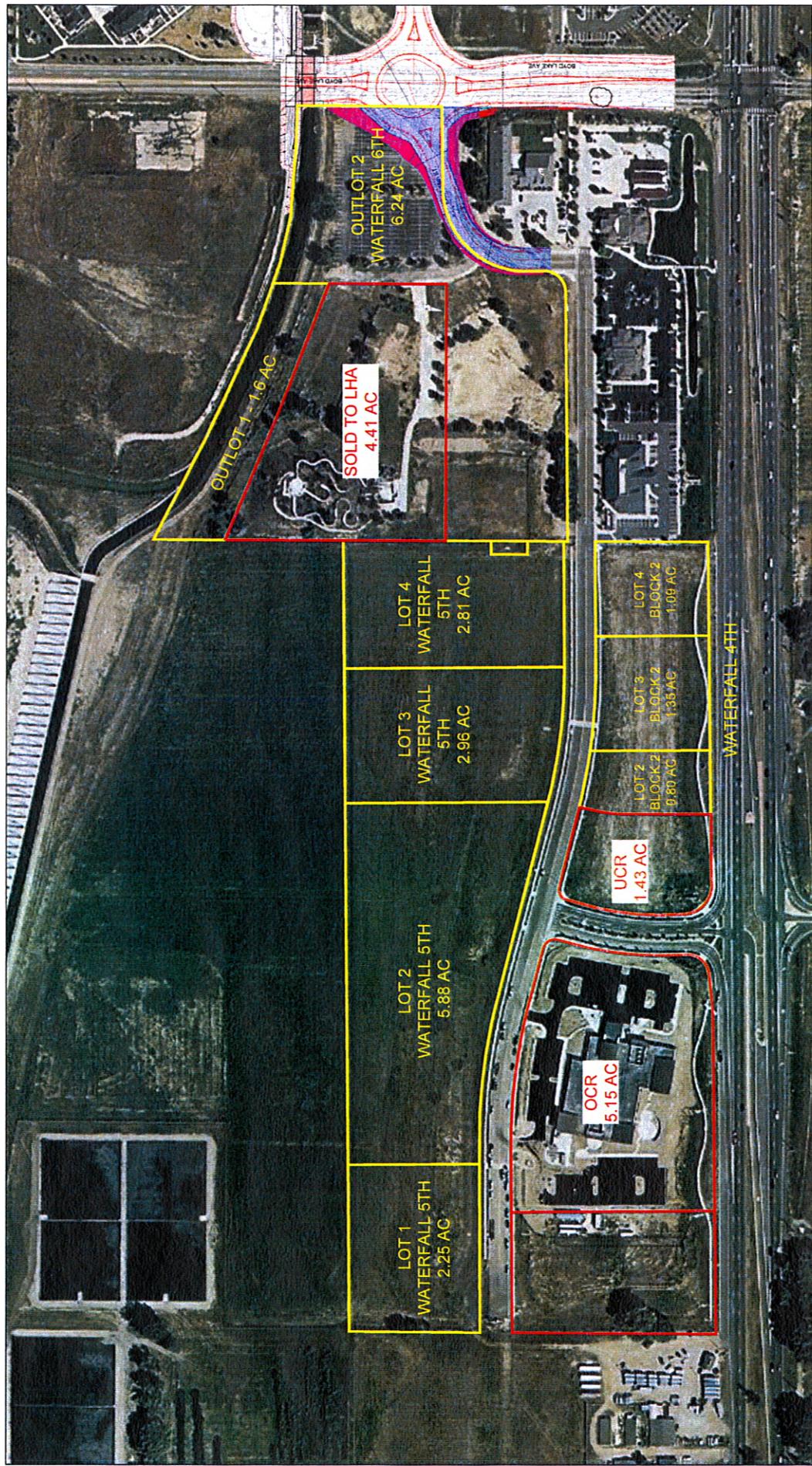
SCALE: T = 200 +/-



**PREPARED BY:**  
**TST, INC. CONSULTING ENGINEERS**

748 Whalers Way  
Fort Collins, Colorado  
Phone: 970.226.0557  
Fax: 970.226.0204  
Job no. 1097000100  
Filename: metro district utility base  
MARCH 6, 2008





BOYD LAKE VILLAGE  
REMAINING LAND

EXCLUSION PETITION

TO: WATERFALL METROPOLITAN DISTRICT NO. 2  
CITY OF LOVELAND, LARIMER COUNTY, COLORADO

Housing Authority of the City of Loveland, Colorado, a Colorado nonprofit corporation (“Petitioner”) hereby respectfully petitions Waterfall Metropolitan District No. 2 (the “District”), acting by and through its Board of Directors, for the exclusion of certain real property legally described as follows (“Property”):

LOT 1, BLOCK 1, WATERFALL SIXTH SUBDIVISION, TO THE CITY OF  
LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

(Street Address: 3601 E. 15<sup>th</sup> Street, Loveland, CO 80538)

Petitioner represents that it is the current fee owner of the Property, subject to matters of record, and that no other person, persons, entity or entities own any fee interest in the Property.

Exclusion from the District is sought pursuant to § 32-1-501 *et seq.*, C.R.S.

WHEREFORE, the Petitioner hereby requests that the Board of Directors of the District, grant this Exclusion Petition for the exclusion of the Property from the District's boundaries pursuant to § 32-1-501 *et seq.*, C.R.S.

**Name of Petitioner:** Housing Authority of the City of Loveland, Colorado  
375 West 37th Street, Suite 200  
Loveland, Colorado 80538

**PETITIONER:**

HOUSING AUTHORITY OF THE CITY OF  
LOVELAND, COLORADO, a Colorado  
nonprofit corporation

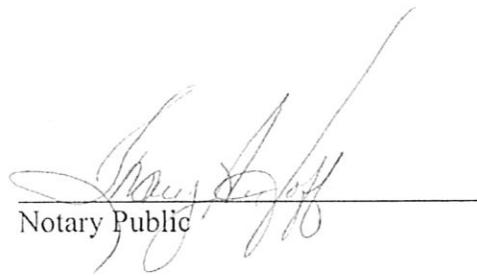
By: Samuel G. Petters  
Its: Executive Director

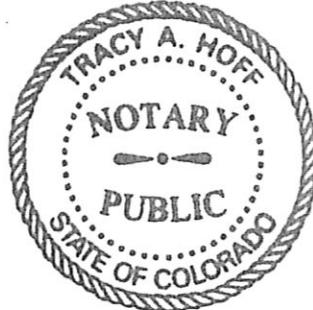
STATE OF COLORADO )  
                          )  
                          ) ss.  
COUNTY OF LARIMER )

The foregoing Exclusion Petition was acknowledged before me on this 8th day of February, 2012, by Samuel G Bettars as Executive Director of the Housing Authority of the City of Loveland, Colorado, a Colorado nonprofit corporation.

WITNESS my hand and official seal.

My Commission expires: 10/10/2015

  
\_\_\_\_\_  
Notary Public



**RESOLUTION OF THE BOARD OF DIRECTORS OF  
WATERFALL METROPOLITAN DISTRICT NO. 2**

**A RESOLUTION APPROVING THE EXCLUSION OF REAL PROPERTY**

WHEREAS, Housing Authority of the City of Loveland, Colorado, a Colorado nonprofit corporation ("Petitioner"), has submitted a petition (the "Petition") to Waterfall Metropolitan District No. 2 (the "District") requesting that certain real property, legally described as Lot 1, Block 1, Waterfall Sixth Subdivision, to the City of Loveland, County of Larimer, State of Colorado (the "Property"), owned by Petitioner and situated in the District be excluded from the boundaries of the District; and

WHEREAS, Petitioner requests that the Board approve its Petition to exclude the Property from the boundaries of the District and the Property not be liable for bonded indebtedness, assessments, or other obligations of the District which may be incurred after the effective date of a Court Order approving the exclusion; and

WHEREAS, Petitioner seeks exclusion of the Property from the boundaries of the District pursuant to Section 32-1-501 *et seq.*, C.R.S.; and

WHEREAS, in accordance with Section 32-1-501(2), C.R.S., the District published notice, on February 14, 2012, in *The Loveland Reporter-Herald*, of the filing of the Petition and stated, in addition to other notice requirements, that a public hearing would be held on the Petition on February 21, 2012, at 11:00 a.m., at 2725 Rocky Mountain Avenue, Suite 200, Loveland, Colorado; and

WHEREAS, on February 14, 2012, the District's Board of Directors ("Board") held a public hearing on the Petition as required by Section 32-1-501(2), C.R.S., at which the Petitioner and District staff addressed the Board.

**FOLLOWING THE PUBLIC HEARING ON THE PETITION, THE BOARD  
CONSIDERED ALL FACTORS SET FORTH IN SECTION 32-1-501(3), C.R.S. AND  
HEREBY MAKES THE FOLLOWING FINDINGS:**

- (a) The exclusion of the Property would be in the best interests of the Property to be excluded; the District; and Larimer County.
- (b) There is no cost or benefit to the Property to be excluded from the provision of the District's services because the District will not provide services to the Property upon exclusion from the District.
- (c) The District will provide economical and sufficient services to properties within the District's boundaries. The Property to be excluded will not be provided services upon exclusion from the District.

- (d) There is no measurable effect of denying the petition on employment and other economic conditions in the District and surrounding area.
- (e) The District is able to provide services at a reasonable cost but the Property to be excluded does not need the services that the District provides to the other properties located within the District's boundaries.
- (f) There is no effect of denying the petition on employment and other economic conditions in the District and surrounding area.
- (g) There is no economic impact on the region and on the District, surrounding area, and State as a whole if the petition is denied or the resolution is finally adopted.
- (h) General municipal services will be provided by the City of Loveland, Colorado (the "City") pursuant to City policy, and the City's Charter and Ordinances.
- (i) There are no additional costs to be levied on other property within the District if the exclusion is granted.

NOW, THEREFORE, BASED UPON THE BOARD'S CONSIDERATION OF THE STATUTORY CRITERIA AND ITS FINDINGS FOLLOWING THE HEARING ON THE PETITION, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF WATERFALL METROPOLITAN DISTRICT NO. 2 AS FOLLOWS:

1. After considering all of the factors set forth in Section 32-1-501(3), C.R.S., the Board has determined that the Property, described in the Petition as Lot 1, Block 1, Waterfall Sixth Subdivision, to the City of Loveland, County of Larimer, State of Colorado, shall be excluded from the District and the Board hereby grants the Petition to exclude the Property from the District's boundaries.

2. Approval of this exclusion is subject to the following:

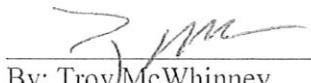
a. Exclusion of the Property represents a material modification of the District's Consolidated Service Plan and requires approval by the City of Loveland City Council (the "City"). Therefore, the Board of Director's approval of such exclusion shall be contingent upon the receipt of the City's approval of this material modification to the District's Consolidated Service Plan.

b. On and after the effective date of this exclusion, the Property described herein shall remain obligated to the same extent as all other land within the District for that proportion of outstanding indebtedness existing immediately prior to the effective date of this exclusion.

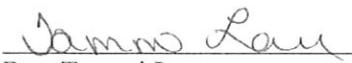
3. This Resolution shall take effect on the date and at the time of its adoption.

ADOPTED AND APPROVED THIS 21<sup>st</sup> DAY OF FEBRUARY, 2012.

WATERFALL METROPOLITAN DISTRICT  
NO. 2

  
By: Troy McWhinney  
Its: President

ATTEST:

  
By: Tammi Lau  
Its: Secretary

## ICENOOGLE | SEAVER | POGUE

A Professional Corporation

Attorneys at Law

4725 South Monaco Street, Suite 225

Denver, Colorado 80237

Telephone: 303.292.9100

Facsimile: 303.292.9101

ALAN D. POGUE  
APogue@ISP-law.com  
Direct: 303.867.3006

February 26, 2012

Via E-Mail to [DuvalJ@ci.loveland.co.us](mailto:DuvalJ@ci.loveland.co.us)

John Duval  
City Attorney  
Loveland City Attorney's Office  
500 East 3<sup>rd</sup> Street  
Loveland, CO 80537

Re: Exclusion of Property from Waterfall Metropolitan District No. 2

Dear John:

I am writing to follow up on our previous conversations regarding a request to exclude certain real property from the boundaries of the Waterfall Metropolitan District No. 2 ("WMD 2").

WMD 2 was formed, together with the Waterfall Metropolitan District No. 1 ("WMD 1"), pursuant to Section 32-1-101 *et seq.*, C.R.S., by an order of the Larimer County District Court, and following approval of the eligible electors of the two districts at an election held on May 6, 2008. The two districts were formed to assist in the financing and development of a project located at the northwest section of the intersection of Boyd Lake Avenue and U.S. Highway 34 in Loveland.

The boundaries of WMD 2 include approximately 12 acres. Prior to formation of WMD 2, this property was the site of a water slide-amusement park. Prior to formation of WMD 2, the water slide-amusement park closed for business, and has not been in operation at any time since formation of WMD 2.

The current owner of the property within the boundaries of WMD 2 has recently sold approximately 4.41 acres of the WMD 2 property to the Loveland Housing Authority ("LHA"). Property owned by LHA and used for affordable housing purposes, is exempt from any real property taxes assessed by WMD 2. The LHA purchase agreement for the property contemplates that the property would be excluded from the WMD 2 boundaries following the close of the sale and the completion of the necessary steps to permit the exclusion under state law.

At the current time, WMD 2 has no outstanding financial obligations or bonds, WMD 2

has not acquired or constructed any public infrastructure since its formation, and WMD 2 currently does not provide any services contemplated in its service plan.

As contemplated by the LHA purchase agreement, the LHA has submitted a petition requesting exclusion of its property from the WMD 2 boundaries. On 21 February 2012, the WMD Board of Directors conducting a hearing, pursuant to Section 32-1-501(2), C.R.S., considered the criteria and made the findings required by Section 32-1-501(3), C.R.S., and adopted a resolution approving the exclusion of the LHA property.

As we discussed, all boundary adjustments that increase or decrease the total acreage within the boundaries of WMD 2 and WMD 1 are considered a material modification of the districts' service plan, and as such, require the approval of the Loveland City Council pursuant to the service plan and Section 32-1-207(2), C.R.S. On behalf of the WMD 2 Board of Directors, I am requesting the Loveland City Council approve the material modification to the WMD 2 service plan, so that the exclusion of the LHA property may be completed and an order entered by the Larimer County District Court.

I am including a copy of the 21 February 2012 resolution and a copy of the petition to exclude filed by the LHA. I greatly appreciate your assistance with this and if you have any questions or would like any additional information please do not hesitate to let me know.

Sincerely,

ICENOGLE | SEAVER | POGUE  
A Professional Corporation

/s/ Alan D. Pogue

Alan D. Pogue

**CALL TO ORDER**

Mayor Gutierrez called the regular meeting of the Loveland City Council to order on the above date at 6:30 PM.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

Roll was called and the following responded: Gutierrez, Farley, Klassen, Shaffer, Trenary, McKean, McEwen and Fogle. Councilor Taylor was absent.

**PROCLAMATION**

Councilor Fogle read a proclamation declaring, February 19 through 25, 2012, as "National Engineers Week". The proclamation was received by City Engineer Dave Klockeman.

Proclamation

WHEREAS,

National Engineers Week, founded in 1951 by the National Society of Professional Engineers, is always celebrated at the time of George Washington's birthday in February because he was our first president and a military engineer, and

WHEREAS,

the purpose of National Engineers Week is to increase public awareness and appreciation of the engineering profession; and

WHEREAS,

engineers are encouraging our young math and science students to realize the practical power of their knowledge; and

WHEREAS,

the Engineers of the State of Colorado will actively help to maintain and sustain the vital infrastructure of our civilized and national environments; and

WHEREAS,

engineers help America remain at the forefront of technological development and contribute to countless breakthroughs that improve the quality of life for people throughout the world.

NOW, THEREFORE, we, the Loveland City Council of the City of Loveland, do hereby proclaim  
 February 19 through 25, 2012 as

**NATIONAL ENGINEERS WEEK**

in the City of Loveland.

Signed this 21st day of February, 2012

Cecil A. Gutierrez, Mayor

**PROCLAMATION**

Councilor Farley read a proclamation declaring the month of February, 2012, as "Career & Technical Education Month". The proclamation was received by Dave Dillman, CTE Coordinator from Thompson School District.

Proclamation

WHEREAS,

the month of February, 2012, has been designated as "Career & Technical Education Month"; and

WHEREAS,

the Thompson R2-J School District provides a Career & Technical Education program that focuses on preparing students to enter the 21st Century workforce; and

WHEREAS,

we desire students to graduate from our schools with the motivation to continue to learn throughout their lives and be equipped with the knowledge and tools to make informed life choices; and

WHEREAS,

the Business/Education Partnership Programs in cooperation with participating businesses in the communities offer all students the opportunity to gain employability skills through classroom education, leadership development, projects, shadows, mentors, apprenticeships, internships, cooperative programs; and

WHEREAS,

the future of the City, State, and Nation depend upon the growth and development of our youth who will one day become our business leaders;

NOW, THEREFORE, we, the City Council of Loveland, Colorado, do hereby proclaim the month of February, 2012, as  
CAREER & TECHNICAL EDUCATION MONTH

and strongly urge business, industry, education, government, and citizens of the community to lend their interest, assistance, and encouragement to the students participating in the program.

Signed this 21st day of February, 2012

Cecil A. Gutierrez, Mayor

#### PROCEDURAL INFORMATION

Mayor Gutierrez made the following procedural announcement: Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. You will be given an opportunity to speak to the item before the Council acts upon it. Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items. Anyone making a comment during any portion of tonight's meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Please limit your comments to no more than three minutes.

#### CONSENT AGENDA

Mayor Gutierrez asked if anyone in the audience, Council or staff wished to speak on any of the items or public hearings listed on the Consent Agenda. Councilor McEwen moved to approve the Consent Agenda. The motion was seconded by Councilor Farley and a roll call vote was taken with all councilors present voting in favor thereof.

#### 1. CITY CLERK

Approval of Council Minutes  
Motion

Administrative Action: A motion, approving Council minutes from the January 31, 2012 study session and February 7, 2012 regular meeting, was approved.

#### 2. CITY MANAGER

Municipal Code Amendment – Change to Senior Advisory Board Membership

Ordinance #5665

Legislative Action: "AN ORDINANCE AMENDING SECTION 2.60.240 OF THE LOVELAND MUNICIPAL CODE PERTAINING TO THE SENIOR ADVISORY BOARD" was approved and ordered published on second reading.

#### 3. PUBLIC WORKS

Supplemental Appropriation – Fleet Replacement of a Roadway Mowing Tractor

Ordinance #5666

Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR THE FLEET REPLACEMENT OF A ROADWAY MOWING TRACTOR" was approved and ordered published on second reading.

#### 4. CULTURAL SERVICES

##### **Supplemental Appropriation for donation to Rialto Theater Center**

Ordinance #5667

Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR EQUIPMENT AT THE RIALTO THEATER CENTER" was approved and ordered published on second reading.

#### 5. WATER & POWER

##### **Amend Rate Schedule TS (Transmission Voltage Service)**

Resolution #R-9-2012

Administrative Action: Resolution #R-9-2010 adopting Rate Schedule TS, Transmission Voltage Service, and superseding all prior resolutions establishing former Rate Schedule IP, interruptible 115 kV transmission voltage service was approved on second reading.

##### **RESOLUTION #R-9-2012**

A RESOLUTION ADOPTING RATE SCHEDULE TS, TRANSMISSION VOLTAGE SERVICE, AND SUPERSEDING ALL PRIOR RESOLUTIONS ESTABLISHING FORMER RATE SCHEDULE IP, INTERRUPTIBLE 115 KV TRANSMISSION VOLTAGE SERVICE

WHEREAS, the Loveland Municipal Charter and Code provide that all utility rates, charges, and fees of the City shall be set by resolution upon two readings of the City Council; and

WHEREAS, the City Council last set such rates, charges, and fees for the City's Water and Power Department in Resolution #R-64-2011; and

WHEREAS, City staff has presented to the City Council a revised "Schedule IP, Interruptible 115 KV Transmission Voltage Service" ("Rate Schedule IP"), now renamed "Schedule TS, Transmission Voltage Service," a copy of which is attached hereto as Exhibit A and incorporated herein by reference ("Rate Schedule TS").

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That Rate Schedule TS, attached hereto as Exhibit A, is hereby adopted.

Section 2. That this Resolution, as of the effective date of this Resolution and as provided in Section 3 below, shall supersede in all respects all previous resolutions of the City Council which established former Rate Schedule IP.

Section 3. That this Resolution shall be effective as of the date of its adoption on second reading as provided in the Loveland Municipal Code.

ADOPTED this 21st day of February, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

#### 6. WATER & POWER

##### **Municipal Code Amendment – Cross Connection Control**

1<sup>st</sup> Rdg Ord. & P.H.

Legislative Action: A public hearing was held and "AN ORDINANCE AMENDING TITLE 13 OF THE LOVELAND MUNICIPAL CODE BY THE ADDITION OF A NEW CHAPTER 13.06 REGARDING CROSS-CONNECTION CONTROL" was approved and ordered published on first reading.

#### 7. FINANCE

##### **Award Fuel Contract for 2012**

Motion

Administrative Action: A motion awarding a contract for fuel and fuel delivery services to Gray Oil Company, Inc. in the amount of \$1,500,000 and authorizing the City Manager to sign the contract on behalf of the City was approved.

#### 8. PARKS & RECREATION

**Support of Grant Application to Complete Mehaffey Park**

**Resolution #R-12-2012**

Administrative Action: Resolution #R-12-2012 supporting the grant application for a Local Parks and Outdoor Recreation grant from the State Board of the Great Outdoors Colorado Trust Fund and completion of Mehaffey Park was approved.

**RESOLUTION #R-12-2012**

**A RESOLUTION SUPPORTING THE GRANT APPLICATION FOR A LOCAL PARKS AND OUTDOOR RECREATION GRANT FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND AND COMPLETION OF MEHAFFEY PARK**

WHEREAS, the City of Loveland owns approximately 60 acres of real property located north of 22nd Street, south of 29th Street and west of Wilson Avenue in the City of Loveland designated for development as a Community Park in accordance with the Mehaffey Park Master Plan (the "Project") and to be known as "Mehaffey Park"; and

WHEREAS, the City Parks and Recreation Division has applied for a \$350,000.00 grant (the "Grant") from Great Outdoors Colorado to construct the skate park, tennis and pickle ball courts and disc golf course at Mehaffey Park as a part of the Project (the "Grant Application"); and

WHEREAS, the Loveland City Council supports the Grant Application, and if the Grant is awarded, the City of Loveland supports the completion of the skate park, tennis and pickle ball courts and disc golf course as a part of the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That the Loveland City Council strongly supports the Grant Application and has appropriated approximately \$6.55M for construction of Mehaffey Park, which includes sufficient matching funds for the Grant with Great Outdoors Colorado.

Section 2. That if the Grant is awarded, the Loveland City Council supports the completion of the skate park, tennis and pickle ball courts and disc golf course as a part of the Project.

Section 3. That the Loveland City Council has appropriated \$6.55M for construction of the Project, which it anticipates to be sufficient to meet the terms and obligations of the Grant if awarded.

Section 4. That the real property designated for construction of Mehaffey Park is owned by City of Loveland and will be owned by the City of Loveland for the next 25 years.

Section 5. That the Loveland City Council anticipates that the City will continue to maintain Mehaffey Park in a high quality condition and will duly consider appropriation of funds for maintenance in its annual budget.

Section 6. If the Grant is awarded, the City Council hereby authorizes the City Manager to sign the Grant agreement with Great Outdoors Colorado.

Section 7. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 21st day of February, 2012

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

**9. PARKS & RECREATION**

**Support of Grant Application for the River Corridors Initiative**

**Resolution #R-13-2012**

Administrative Action: Resolution #R-13-2012 supporting the grant application for a River Corridors Initiative grant from the State Board of the Great Outdoors Colorado (GOCO) Trust Fund for the acquisition and development of open lands and trail corridors and development of the HP/Agilent Open Space site and trail connections was approved.

**Resolution #R-13-2012**

**A RESOLUTION SUPPORTING THE GRANT APPLICATION FOR A RIVER CORRIDORS INITIATIVE GRANT FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO (GOCO) TRUST FUND FOR THE ACQUISITION AND DEVELOPMENT OF OPEN LANDS AND TRAIL CORRIDORS AND DEVELOPMENT OF THE HP/AGILENT OPEN SPACE SITE AND TRAIL CONNECTIONS**

WHEREAS, the City of Loveland has prioritized the acquisition of open lands and trail corridors along the Big Thompson River Corridor in and surrounding the City of Loveland in accordance with the 2003 Open Lands Plan; and

WHEREAS, the City of Loveland owns approximately 121 acres of real property located south of 1st Street and east of Taft Avenue in the City of Loveland designated for development as a public open space area in accordance with the HP/Agilent Open Space Master Plan under development ("HP/Agilent Open Space"); and

WHEREAS, the City of Loveland has applied for a \$3.5M grant (the "Grant") from Great Outdoors Colorado ("GOCO") to acquire open lands and trail corridors, and to develop a publicly accessible open space site at the HP/Agilent Open Space and trail connections in accordance as a part of the Big Thompson River Open Space and Trails Project (the "Project"); and

WHEREAS, the City of Loveland supports the GOCO Grant application and if the Grant is awarded, the City of Loveland supports the acquisition of open lands and trail corridors and the development of HP/Agilent Open Space and trail connections as a part of the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That the Loveland City Council strongly supports the Grant application and has appropriated approximately \$1.5M in 2012 for the acquisition and development of open lands and trails, which includes sufficient matching funds for the Grant with GOCO.

Section 2. That if the Grant is awarded, the Loveland City Council supports the acquisition of open lands and trail corridors along the Big Thompson River Corridor and completion of the HP/Agilent Open Space development and trail connections as a part of the Project.

Section 3. That if the Grant is awarded, the Loveland City Council supports the completion of the Project within three years of the date of the grant award (June 15, 2012).

Section 4. That the Loveland City Council has appropriated \$1.5M for the acquisition and development of open lands and trails, which it anticipates to be sufficient to meet the terms and obligations of the Grant if awarded.

Section 5. That the real property designated for development of the HP/Agilent Open Space is owned by the City of Loveland and will be owned by the City of Loveland for at least 25 years.

Section 6. That the real properties proposed for open lands and trail corridor acquisition as a part of the Project will be purchased only from willing sellers, and if acquired, will be under the control of the City of Loveland for at least 25 years.

Section 7. That the Loveland City Council anticipates that the City will continue to maintain the HP/Agilent Open Space site and any trail connections constructed as part of the Project in a high quality condition and will duly consider appropriation of funds for maintenance in its annual budget.

Section 8. If the Grant is awarded, the Loveland City Council hereby authorizes the City Manager to sign the Grant agreement with Great Outdoors Colorado.

Section 9. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 21st day of February, 2012

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

## **10. HUMAN RESOURCES**

### **Increase Membership of Board of Trustees of Fire Retirement Plan**

**Resolution #R-14-2012**

Administrative Action: Resolution #R-14-2012 amending the City of Loveland Fire Department Money Purchase Pension Plan and Trust to increase the size of the Board of Trustees from five to seven members was approved.

**RESOLUTION #R-14-2012**

**A RESOLUTION AMENDING THE CITY OF LOVELAND FIRE DEPARTMENT MONEY PURCHASE PENSION PLAN AND TRUST TO INCREASE THE SIZE OF THE BOARD OF TRUSTEES FROM FIVE TO SEVEN MEMBERS**

WHEREAS, the City of Loveland (the "City") is the sponsor of that certain fire retirement plan titled "City of Loveland Fire Department Money Purchase Pension Trust," as amended, and "City of Loveland Fire Department Money Purchase Pension Plan," as amended, (referred to collectively as the "Plan"); and

WHEREAS, the Board of Trustees (the "Board") of the Plan consists of five members: three voting members elected by the trust beneficiaries who are also Plan participants and two non-voting members who are representatives of the City's finance and human resources departments, respectively; and

WHEREAS, the Board desires to amend the Plan by the addition of two voting members to the Board, one of which shall be an external financial subject matter expert, and the other shall be an administration level fire chief, division fire chief or other higher ranking chief with the City's fire department; and

WHEREAS, the external financial subject matter expert shall be appointed by the Board, the fire department chief shall be assigned by the City's Fire Chief, and both positions shall have a regular term of one year; and

WHEREAS, the Board has obtained approval of such amendment by at least sixty-five percent (65%) of trust beneficiaries who are also Plan participants, has voted in favor of such amendment, and now seeks approval of such amendment by City Council; and

WHEREAS, City Council finds that the proposed amendment to the Plan is reasonable and in the best interests of the City, its citizens and the Plan participants.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO AS FOLLOWS:

Section 1. The Plan is hereby amended to increase the membership of the Board from five to seven members. The two new Board member positions shall have voting rights, shall have a regular term of one year, and shall be held by one external financial subject matter expert, as appointed by the Board, and one administration level fire chief, division chief or other higher ranking chief from the City's fire department, as assigned by the Fire Chief.

Section 2. The City Manager is hereby authorized and directed to execute such amendment to the Plan on behalf of the City, subject to such modifications in form or substance as the City Manager, in consultation with the City Attorney, may deem necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 3. That this Resolution shall go into effect as of the date and time of its adoption.

ADOPTED this 21st day of February, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

## 11. ECONOMIC DEVELOPMENT

### **City of Loveland Economic Development Strategic Plan**

Resolution #R-15-2012

Legislative Action: Resolution #R-15-2012 adopting the City of Loveland Economic Development Strategic Plan (February 2012) was approved.

### **RESOLUTION #R-15-2012**

#### **A RESOLUTION ADOPTING THE CITY OF LOVELAND ECONOMIC DEVELOPMENT STRATEGIC PLAN (FEBRUARY 2012)**

WHEREAS, Goal 13.1 of the City of Loveland Comprehensive Plan states that the City should, "periodically review and amend, as appropriate, and adopt the City's economic development plan"; and

WHEREAS, with the assistance of a working group of business leaders and guidance from the Loveland City Council, a strategic plan has been developed to guide the City's economic development efforts.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That the City of Loveland Economic Development Strategic Plan, February 2012 attached hereto as Exhibit A and incorporated herein by this reference is hereby adopted.

Section 2. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 21st day of February, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available at the City Clerk's Office

## 12. ECONOMIC DEVELOPMENT

### City of Loveland Incentive Policy

Resolution #R-16-2012

Legislative Action: Resolution #R-16-2012 adopting the City of Loveland Incentive Policy (February 2012) was approved.

#### RESOLUTION #R-16-2012

##### A RESOLUTION ADOPTING THE CITY OF LOVELAND INCENTIVE POLICY (FEBRUARY 2012)

WHEREAS, at its meeting on September 16, 2008, the Loveland City Council adopted Resolution #R-112-2008 approving the City of Loveland Economic Development Policy, setting forth minimum standards to be met by applicants for economic incentives, including primary employment incentive guidelines and a process for application and deliberation; and

WHEREAS, the Economic Development Policy, October 2009, was subsequently amended and restated and approved by the Loveland City Council's adoption of Resolution #R-103-2009; and

WHEREAS, the City desires to further amend the Economic Development Policy, including changes to reflect the creation of the Economic Development Department of the City in August 2011, to change the name of the Economic Development Policy to the Incentive Policy, and to create a simplified process for small incentive requests.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That the City of Loveland Incentive Policy February 2012 attached hereto as Exhibit A and incorporated herein by this reference is hereby adopted.

Section 2. That this Resolution shall supersede in all respects all previous resolutions of the City Council approving all prior versions of City of Loveland Economic Development Policy, including Resolutions #R-112-2008 and #R-103-2009.

Section 3. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 21st day of February, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available at the City Clerk's Office

## 13. FIRE & RESCUE

### Supplemental Appropriation from a Federal Assistance to Firefighters Grant

1<sup>st</sup> Rdg & P.H.

Administrative Action: A public hearing was held and "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR THE REPLACEMENT OF SELF-CONTAINED BREATHING APPARATUS AND AUTOMATED EXTERNAL DEFIBRILLATORS FROM A FEDERAL ASSISTANCE TO FIREFIGHTERS GRANT " was approved and ordered published on first reading.

## 14. WATER & POWER

### Supplemental Appropriation for Colorado-Big Thompson Project Water

1<sup>st</sup> Rdg & P.H.

Administrative Action: A public hearing was held and "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR THE PURCHASE OF UNITS OF THE COLORADO-BIG THOMPSON (CBT) PROJECT WATER" was approved and ordered published on first reading.

END OF CONSENT AGENDA

CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.

COUNCIL COMMENTS

Farley	Councilor Farley commented on Consent Item #4 "Supplemental Appropriation for Donation to Rialto Theater Center". He congratulated Roseanne Wheeler and all members of the Rialto Theater Guild for their fund raising efforts and donation to the Rialto Theater Center.
Klassen	Councilor Klassen complimented Steve Adams, Director of Water & Power for his work in obtaining the additional Colorado-Big Thompson units.
McKean	Councilor McKean commented on keeping a focus on ensuring local art/artists are represented in Loveland.
<b>CITY COUNCIL</b>	
a) <u>Citizens' Reports</u>	None
b) <u>Business from Council</u>	
Shaffer	Councilor Shaffer congratulated the staff at Medical Center of the Rockies on their five year anniversary.
Gutierrez	Mayor Gutierrez commented on the grand re-opening activities held this past Saturday at the Loveland Public Library. He extended thanks to the Friends of the Library for their fund raising, facilities staff; Library Board, Visual Arts Commission and current and past councils. He also congratulated the staff at Habitat for Humanity on their 25th anniversary.
c) <u>City Manager Report</u>	None
d) <u>City Attorney Report</u>	None

#### PROCEDURAL INFORMATION

Anyone who wishes to address the Council on any item on this part of the agenda may do so when the Mayor calls for public comment. All public hearings are conducted in accordance with Council Policy. When Council is considering adoption of an ordinance on first reading, Loveland's Charter only requires that a majority of the Council present vote in favor of the ordinance for it to be adopted on first reading. However, when an ordinance is being considered on second or final reading, at least five of the nine members of Council must vote in favor of the ordinance for it to become law.

#### REGULAR AGENDA

##### CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

###### 15. FINANCE

###### December 2011 Financial Report

This is an Information Only item. Acting Finance Director, Bonnie Steele introduced this item to Council. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves for the twelve months ending December 31, 2011.

###### 16. CITY MANAGER

###### Investment Report for December 2011

This is an Information Only item. Executive Fiscal Advisor, Alan Krcmarik introduced this item to Council. The budget estimate for investment earnings for 2011 is \$3,163,290.

For the year 2011, the amount posted to the investment account is \$3,283,125 including realized gains. Actual year-to-date earnings are higher than the year-to-date projection by \$119,835. Based on December's monthly statement, the estimated annualized yield on the U.S. agencies and corporates was up to 1.75%, under the annual target rate of 2% for 2011. Reinvestment rates are still significantly lower than the first-half of 2011.

## **17. DEVELOPMENT SERVICES**

### **Vacation of a portion of a public right-of-way Warnock Addition (Dairy Queen)**

**Ordinance #5668**

Legislative Action: City Planner Troy Bliss introduced this item to Council. Also present was Al Hauser of Hauser Architects, representing applicant Craig Lindberg. This is a legislative action to consider an ordinance on second reading vacating a portion of public alley right-of-way located in Block 1 of the Warnock Addition. The subject property is generally located on the south side of Eisenhower Boulevard between Lincoln Avenue and Jefferson Avenue. The portion of alley that would be vacated bisects property owned by Craig Lindberg, owner of the Dairy Queen restaurant at this location. The Mayor opened the public hearing at 7:41 p.m. and hearing no comments closed the hearing at 7:41 p.m. Councilor McEwen moved to make the findings set forth therein, approved and ordered published on first reading "AN ORDINANCE VACATING A PORTION OF A PUBLIC RIGHT-OF-WAY LOCATED IN BLOCK 1 OF THE WARNOCK ADDITION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO". Councilor Klassen seconded the motion and a roll call vote was held with all Councilors present voting in favor thereof.

## **18. POLICE**

### **Municipal Code Amendment – Pawnbroker Licensing & Regulation**

**1<sup>st</sup> Rdg Ord & P.H.**

Legislative Action: Police Chief Luke Hecker introduced this item to Council. This is a legislative action. Adoption of the ordinance would make it unlawful for any person to engage in pawnbroker operations in the City of Loveland unless a pawnbroker license has been issued by the City Clerk pursuant to the requirements of Chapter 5.28. The Mayor opened the public hearing at 8:08 p.m. and hearing no comments closed the hearing at 8:08 p.m. Councilor McEwen moved to approve and ordered published on first reading "AN ORDINANCE REPEALING AND REENACTING CHAPTER 5.28 OF THE LOVELAND MUNICIPAL CODE REGARDING PAWBROKERS TO LICENSE AND REGULATE PAWBROKERS AND PAWBROKER OPERATIONS". Councilor Shaffer seconded the motion and a roll call vote was held with all Councilors present voting in favor thereof.

## **19. DEVELOPMENT SERVICES**

### **Loveland Historic Sites Inventory**

**Resolution #R-17-2012**

Administrative Action: City Planner Bethany Clark introduced this item to Council. This item is an administrative action to adopt a resolution adding 37 properties to the Loveland Historic Sites Inventory (the "Inventory"). The Inventory is part of the Historic Preservation Plan, which was adopted in 2002. The Inventory is a database that maintains a record of all properties in Loveland that have been surveyed. Demolition permits for those properties in the Inventory that have been determined to be potentially eligible for designation as a historic landmark are subject to review by the Historic Preservation Commission. Council expressed concern that the Municipal Code does not provide a requirement to notify property owners, when their property has been included in the inventory list and that they could be subject to a demolition delay. Councilor

McEwen moved to refer back to staff and the Historic Preservation Commission for review of the Municipal Code provisions with special attention to notification and demolition delay provisions for past as well as prospective properties identified on the Loveland Historic Sites Inventory. Councilor Shaffer seconded the motion and a roll call was held with all Councilors present voting in favor thereof.

## 20. ECONOMIC DEVELOPMENT

### **City of Loveland Technology Transfer Acceleration Initiative**

#### **Motion**

Administrative Action: Economic Development Director Betsey Hale introduced this item to Council. The City of Loveland economic development strategy states the number one goal for the City is to "Make Loveland the heart of innovation and creativity in Colorado." City Economic Development staff and local primary employers are requesting the Loveland City Council use \$150,000.00 of the Council economic development incentive fund to seed an accelerated technology transfer program citywide. The following local business representatives spoke in support of the technology transfer acceleration initiative: Kelly Peters, Director of Business at Northern Colorado Economic Development Corporation; Terry Precht, CEO of Vergent Products; Jay Dokter, Founder Cadeka; and David Lung, President of DA2 Consulting. Councilor McEwen made a motion to approve the use of \$150,000 in City Council incentive funds for a citywide technology transfer effort for primary employers; budget for the project will be tracked separately from other Economic Development projects; and updates to Council will be provided in June, September and December, 2012. Councilor Shaffer seconded the motion and a roll call vote was held with all Councilors present voting in favor thereof.

#### **COUNCIL ITEM**

Councilor McEwen moved to appoint the following Council members to the Economic Development Subcommittee: Cathleen McEwen, Hugh McKean, Phil Farley and Cecil Gutierrez. Councilor McKean seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

#### **ADJOURNMENT**

Having no further business to come before Council, the February 21, 2012 Regular Meeting was adjourned at 11:25 p.m.

Respectfully Submitted,

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Teresa G. Andrews, City Clerk

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Cecil A. Gutierrez, Mayor



**CITY OF LOVELAND**  
**CULTURAL SERVICES DEPARTMENT/RIALTO THEATER**  
228 East Fourth Street • Loveland, Colorado 80537  
(970) 962-2120 • FAX (970) 962-2422 • TDD (970) 962-2620

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<b>AGENDA ITEM:</b>	<b>10</b>
<b>MEETING DATE:</b>	3/6/2012
<b>TO:</b>	City Council
<b>FROM:</b>	Cultural Services Department, Susan Ison
<b>PRESENTER:</b>	Susan Ison Earl Sethre

---

**TITLE:**

A resolution approving the recommendations of the Community Foundation of Northern Colorado and the Cultural Services Department regarding the naming of rooms located within the Rialto Theater Center

**RECOMMENDED CITY COUNCIL ACTION:**

Move to adopt the resolution as recommended

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

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**DESCRIPTION:**

This is an administrative action requesting certain rooms in the city-owned spaces within the Rialto Theater Center be named for those persons and entities that made significant and generous contributions to the community and to the Rialto Theater Center.

**BUDGET IMPACT:**

Positive  
 Negative  
 Neutral or negligible

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**SUMMARY:**

The City received a grant from the Community Foundation of Northern Colorado in the amount of \$700,000 to be used for the construction of the Rialto Theater Center. The Community Foundation and the Cultural Services Department request that the City name certain rooms in the city-owned spaces within the Rialto Theater Center for those persons and entities that made

significant and generous contributions to the community and to the rialto Theater Center, namely the Devereaux family, Bruce and Muriel Hach, the McMurry-Spieles family, the McWhinney Foundation and the Walbye family.

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**REVIEWED BY CITY MANAGER:**

*William D. Caline*

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**LIST OF ATTACHMENTS:**

Resolution

Exhibit A: Proposed room names

**RESOLUTION #R-22-2012****A RESOLUTION APPROVING THE RECOMMENDATIONS OF THE COMMUNITY FOUNDATION OF NORTHERN COLORADO AND THE CULTURAL SERVICES DEPARTMENT REGARDING THE NAMING OF ROOMS LOCATED WITHIN THE RIALTO THEATER CENTER**

**WHEREAS**, the City of Loveland and Rialto Bridge, LLC have partnered to build an integrated public-private project now known as the Rialto Theater Center, located at 222 and 228 E. Fourth Street in Loveland, Colorado; and

**WHEREAS**, in early 2011, the City received a grant from the Community Foundation of Northern Colorado (“Community Foundation”) in the amount of \$700,000 to be used toward the construction and contingency funding of the Rialto Theater Center; and

**WHEREAS**, as part of that grant, the Community Foundation requested that the City consider a request to name certain rooms in the City-owned spaces within the Rialto Theater Center in honor of, or in honor of individuals designated by, those persons and entities that made significant and generous contributions to the community and to the Rialto Theater Center, namely the Bruce and Muriel Hach Family Fund at the Community Foundation (in honor of Bruce and Muriel Hach), Home State Bank (in honor of the Devereaux Family), the McMurry-Spieles Family, the McWhinney Foundation, and the Walbye Family (in honor of Phyllis Walbye); and

**WHEREAS**, the Cultural Service Department has reviewed the naming plan presented by the Community Foundation and recommends that the City Council approve said naming plan; and

**WHEREAS**, the City Council desires to recognize the significant and generous contributions to the community and to the Rialto Theater Center made by the above-listed donors by naming certain rooms located within the Rialto Theater Center in honor of, or in honor of individuals designated by, said donors.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That the City Council hereby finds that the honorary naming of rooms within the Rialto Theater Center is an appropriate way to recognize the significant and generous contributions to the community and to the Rialto Theater Center made by the Bruce and Muriel Hach Family Fund at the Community Foundation (in honor of Bruce and Muriel Hach), Home State Bank (in honor of the Devereaux Family), the McMurry-Spieles family, the McWhinney Foundation, and the Walbye Family (in honor of Phyllis Walbye).

**Section 2.** That the rooms depicted on Exhibit A, attached hereto and incorporated herein by reference, are hereby named as designated on Exhibit A in accordance with the naming

and Muriel Hach, the McMurry-Spieles family, the McWhinney Foundation, and the Walbye family are hereby accepted and shall be placed in the corresponding rooms within the Rialto Theater Center.

**Section 4.** That this Resolution shall take effect as of the date of its adoption.

ADOPTED this 6<sup>th</sup> day of March, 2012.

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Cecil A. Gutierrez, Mayor

ATTEST:

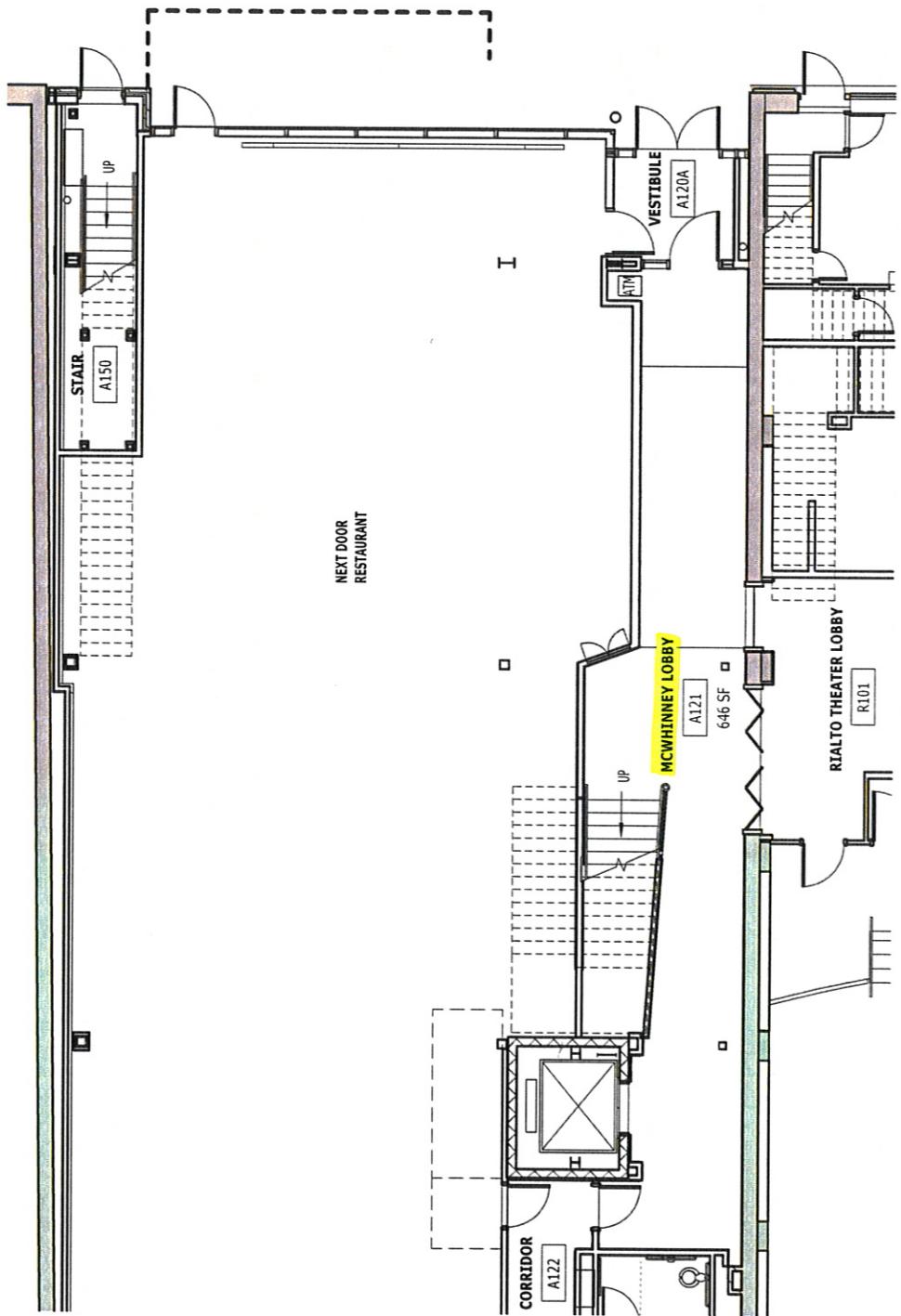
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City Clerk

APPROVED AS TO FORM:

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*Shane L. Ottes*  
Assistant City Attorney



1 Plan @ Main Level

1/8" = 1'-0"

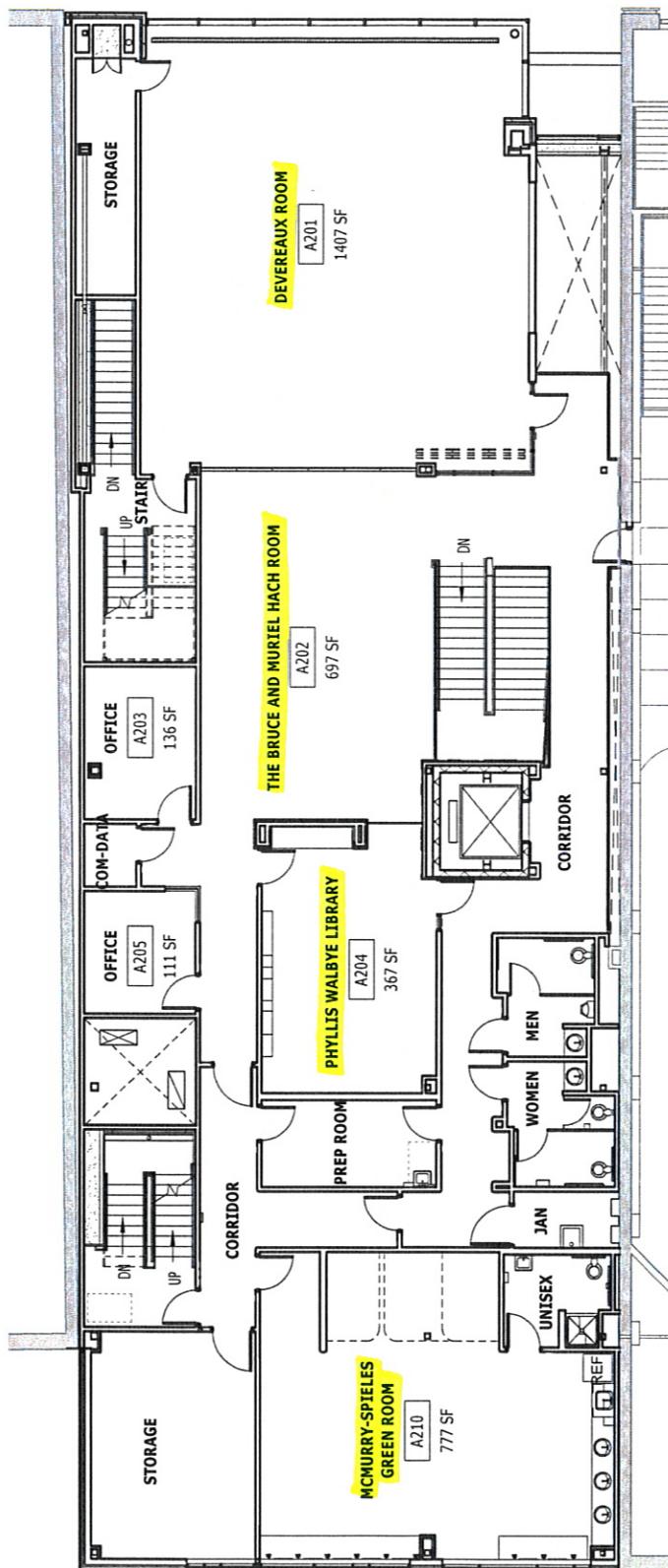
ARCHITECT: [www.rbbarchitects.com](http://www.rbbarchitects.com)

**RBB**  
RIALTO BRIDGE

315 East Mountain Ave  
Suite 100  
Fort Collins, CO 80524  
T - 970-484.0117  
F - 970-484.0264  
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CITY OF LOVELAND/RIALTO BRIDGE, LLC.  
222 EAST 4TH STREET  
LOVELAND, CO 80537

**SHEET INFORMATION**  
SHEETNAME: PLAN @ FIRST  
FLOOR LOBBY  
PROJECT #: 1004  
DATE: 2/21/12  
RIALTO-SK-3



Plan @ Level 2

$$3/32" = 1'-0"$$

www.patchtree.com

RIALTO BRIDGE

CITY OF LOVELAND/RIALTO BRIDGE, LLC.  
222 EAST 4TH STREET  
LOVELAND, CO 80537

SHEET NAME: PLAN @ :  
PROJECT #: 1004  
DATE: 2/21/12

SHEET NAME: PLAN @ 2ND FLOOR  
PROJECT #: 1004  
DATE: 2/2/12  
RIALTO-SK-2



**CITY OF LOVELAND**  
**ECONOMIC DEVELOPMENT OFFICE**  
 Civic Center • 500 East Third • Loveland, Colorado 80537  
 (970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

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<b>AGENDA ITEM:</b>	<b>11</b>
<b>MEETING DATE:</b>	3/6/2012
<b>TO:</b>	City Council
<b>FROM:</b>	Betsey Hale, Economic Development Department
<b>PRESENTER:</b>	Mike Scholl, Economic Development Administrator

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**TITLE:**

A resolution approving a lease agreement with the Community Foundation of Northern Colorado for the use of office space located within the Rialto Theater Center

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt a resolution to approve a lease agreement with the Community Foundation of Northern Colorado for a small office at the Rialto Theater Center, and to authorize the City Manager to sign the lease agreement on behalf of the city.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

---

**DESCRIPTION:**

As part of the \$700,000 contribution to the Rialto Theater Center project, the Community Foundation of Northern Colorado requested a small office space in the building to enhance their presence in Loveland. This was contemplated and approved by Council on February 15, 2011 as part of the appropriation for the Rialto Bridge project. The award letter is included as an attachment. The lease has been contemplated from the beginning of the project and the request was included the award letter for the CFNC's contribution. The lease will be for ten years with an option to renew for an additional ten years.

**BUDGET IMPACT:**

Positive  
 Negative  
 Neutral or negligible

The City will receive \$1, plus \$6/square foot per year from the CFNC, which will be used to cover the cost of operations and maintenance of the office. Furniture and other items will be provided at the CFNC's expense.

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**SUMMARY:**

The resolution would direct the City Manager to sign a ten-year lease with the Community Foundation of Northern Colorado (CFNC) for a 136 square foot office at the Rialto Theater Center. The lease was considered by Council as part of the construction appropriation approved by on February 15, 2011. A copy of the Grant Award letter is included for your review.

As per the agreement, approved on February 15, 2011 the CFNC has agreed to pay \$1 per year base rent, plus \$6/square foot annually to cover the cost of operations and maintenance of the office. The \$6/square foot cost is the total aggregated cost per square foot to maintain all City facilities and is used by the City's Facilities Division.

In addition, the lease is provides for use of the Phyllis Walbye Library Conference Room at no cost and two uses of the Devereaux/Hach Room annually. The CFNC has agreed in principle to pay the cost of operations and maintenance for the Phyllis Walbye Library Conference Room in exchange for free use of the room by local non-profits, which will be handled under a separate agreement.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

- A. Resolution
- B. Lease Agreement
- C. Grant Award Letter (February 15, 2011)

## RESOLUTION #R-23-2012

### **A RESOLUTION APPROVING A LEASE AGREEMENT WITH THE COMMUNITY FOUNDATION OF NORTHERN COLORADO FOR THE USE OF OFFICE SPACE LOCATED WITHIN THE RIALTO THEATER CENTER**

**WHEREAS**, the City of Loveland is the owner of certain office space located within the Rialto Theater Center, located at 222 and 228 E. Fourth Street, Loveland, Colorado 80537; and

**WHEREAS**, the Community Foundation of Northern Colorado (the “Community Foundation”) desires to lease the office space from the City; and

**WHEREAS**, the City desires to enter into a lease agreement whereby the City will lease to the Community Foundation, and the Community Foundation will lease from the City lease, the office space.

### **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That the Lease Agreement, attached hereto as Exhibit A and incorporated herein by reference, is hereby approved.

**Section 2.** That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Lease Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

**Section 3.** That the City Manager and the City Clerk are hereby authorized and directed to execute the Lease Agreement on behalf of the City.

**Section 4.** That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 6<sup>th</sup> day of March, 2012.

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Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

Shane L. Ottes  
Assistant City Attorney

## LEASE AGREEMENT

THIS LEASE AGREEMENT (“**Lease**”) is entered into this 6<sup>th</sup> day of March, 2012, by and between the CITY OF LOVELAND, a Colorado municipal corporation (“**City**”), and the COMMUNITY FOUNDATION OF NORTHERN COLORADO, a Colorado nonprofit corporation (“**Foundation**”).

WHEREAS, the City is the owner of certain office space located within the Rialto Theater Center, located at 222 and 228 E. Fourth Street, Loveland, Colorado 80537 (“**Building**”); and

WHEREAS, the Community Foundation of Northern Colorado desires to lease the office space from the City; and

WHEREAS, the parties desire to enter into this Lease whereby the City will lease to the Foundation, and the Foundation will lease from the City, the office space.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

**1. Term.** This Lease shall commence on March 6, 2012 and expire on December 31, 2021, unless sooner terminated by operation or law or in accordance with this Lease. This Lease may be renewed for an additional term of ten (10) years upon written agreement of the parties, and subject to any modifications, including adjustments in rent, as the parties may agree.

**2. Premises.** The premises to be leased shall consist of certain office space located within the Building as depicted on **Exhibit A**, attached hereto and incorporated herein by reference (“**Premises**”). The Foundation has inspected the Premises and accepts it in its present condition as of the date of this Agreement. The Foundation shall have access to the Premises for the purposes set forth herein at all times during the term of this Agreement. The City shall provide the Foundation with keys and/or access cards to gain entry to the Premises.

**3. Use of Premises.** The Foundation shall be permitted to use and occupy the Premises for office space for the purpose of furthering its organizational goals; provided, however, that such use is consistent with the covenants and easements and all other matters of record as of the date of this Lease. No additional uses shall be permitted without the City’s prior written consent.

**4. Phyllis Walbye Library Conference Room.** The City agrees that the Foundation may use the Phyllis Walbye Library Conference Room located within the Building as identified on Exhibit A for meeting purposes, without charge, on an as-needed basis when the Phyllis Walbye Library Conference Room is not in use by the City. The Foundation shall schedule all such use through the Rialto Theater’s administrative office.

**5. Bruce and Muriel Hach Room; Devereux Room.** The City agrees that the Foundation may use the Bruce and Muriel Hach Room (the “**Hach Room**”) and the Devereux

Room, which are located within the Building as identified on Exhibit A, for meeting or event purposes, twice per calendar year, without charge, on an as-needed basis when the Hach Room and Devereux Room are not in use by other, previously-scheduled groups. Any additional use of the Hach Room or Devereux Room by the Foundation shall be subject to the customary charge applicable to all other nonprofit users. The Foundation shall schedule all use of the Hach Room and Devereux Room through the Rialto Theater's administrative office.

6. **Rent.** The City acknowledges the Foundation's substantial contribution of Seven Hundred Thousand Dollars (\$700,000.00) toward construction of the Building. In consideration of said contribution, the Foundation shall be entitled to use of the Premises for the base amount of One Dollar (\$1.00) per year, plus Eight Hundred Sixteen Dollars (\$816.00) per year, calculated by multiplying the Premises square footage of one hundred thirty-six (136) square feet times a rental amount of Six Dollars (\$6.00) per square foot (together, the "**Rent**"). Rent shall be paid by the Foundation to the City each calendar year during the term of this Lease, in advance, on or before January tenth (10<sup>th</sup>) of the then-current calendar year. Notwithstanding anything herein to the contrary, for the first calendar year of this Lease, the Foundation shall pay to the City Rent in the amount of One Dollar (\$1.00), plus Six Hundred Twelve Dollars (\$612.00), which represents the prorated amount due for 2012. Said amount shall be paid by the Foundation to the City on or before March 10, 2012.

7. **Utilities.** The City shall provide the following utilities to the Premises for use by the Foundation: water, wastewater, electric, trash and recycling, and gas ("**Utilities**"). The Utilities shall be provided without additional charge to the Foundation. The Foundation shall provide telephone and Internet services to the Premises for use by the Foundation, if desired, at the Foundation's sole cost and expense.

8. **Furnishings and Equipment.** The Foundations shall be responsible for providing all furnishings and equipment required or desired by the Foundation for its use of the Premises.

9. **Alterations.** The Foundation shall not make any substantial alterations or changes to the Premises without the City's prior written consent, which shall not be unreasonably withheld.

10. **Right to Inspect Premises.** The City shall have the right at all reasonable times to enter the Premises for any and all purposes not inconsistent with this Lease, provided such action does not unreasonably interfere with the Foundation's use, occupancy, or security requirements of the Premises. Except when necessary for reasons of public safety or law enforcement, or for the protection of property as determined by the City, the City shall provide twenty-four (24) hours' prior notice of its intent to inspect the Premises.

11. **Maintenance and Repair of Premises.**

a. The City shall be responsible for maintenance and repair of the Premises including, without limitation, tenant finish support (colors, finishes, *etc.*), daily housekeeping, carpet care, overhead lighting maintenance, security system administration

and maintenance, heating and cooling, plumbing, and electrical systems and the exterior of the Premises, including the roof; provided, however, that the Foundation shall reimburse the City for costs associated with any maintenance or repair required due to damage caused by the Foundation, its employees, or agents, normal wear and tear excepted. Invoices for any such maintenance or repair shall be paid by the Foundation within thirty (30) days of invoice.

**b.** The Foundation shall, at all times, keep the Premises in a clean and orderly condition and shall be responsible for daily collection and dumping of its trash and recyclables into bins supplied by the City at locations designated by the City.

**12. No Discrimination.** The Foundation shall not discriminate on the grounds of race, color, disability, or national origin in the use or occupancy of the Premises.

**13. Insurance.**

**a.** During the duration of this Lease, the Foundation shall procure and keep in force a policy of workers' compensation insurance as required by Colorado law and a policy of comprehensive general liability insurance insuring the Foundation and naming the City as an additional insured with minimum combined single limits of One Million Dollars (\$1,000,000.00) each occurrence and One Million Dollars (\$1,000,000.00) aggregate. The general liability policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The general liability policy shall contain a severability of interests provision. The general liability policy shall be for the mutual and joint benefit and protection of the Foundation and the City and shall provide that the City, although named as an additional insured, shall nevertheless be entitled to recover under said policy for any loss occasioned to the City, its officers, employees, and agents by reason of negligence of the Foundation, its officers, employees, agents, subcontractors, or business invitees. The general liability policy shall be written as a primary policy not contributing to and not in excess of coverage the City may carry.

**b.** Policies required herein shall be with companies qualified to do business in Colorado with a general policyholder's financial rating reasonably acceptable to the City. Said policies shall not be cancelable or subject to reduction in coverage limits or other modification except after thirty (30) days' prior written notice to the City. The Foundation shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal the Foundation changes to "occurrence," the Foundation shall carry a six-month tail.

**14. Indemnity.** The Foundation shall assume the risk of all personal injuries, including death resulting therefrom, to persons and damage to or destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in connection with or arising out of the acts or omissions of the Foundation, its employees, agents, servants, subcontractors, or authorized volunteers, or by the conditions created thereby. The Foundation

shall indemnify and hold harmless the City, its officers, agents, and employees from and against any and all claims, liabilities, costs, expenses, penalties, attorney's fees, and defense costs arising from such injuries to persons or damages to property based upon or arising out of the acts or omissions of the Foundation, its employees, agents, servants, subcontractors, or authorized volunteers or out of any violation by the Foundation, its employees, agents, servants, subcontractors, or authorized volunteers of any law, regulation, or ordinance.

**15. Governmental Immunity.** Notwithstanding any other provision of this Lease to the contrary, no term or condition of this Lease shall be construed or interpreted as a waiver, express or implied, of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, and other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* ("Act") and under any other applicable law. The parties understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the City, its departments, commissions, boards, officials, and employees is controlled and limited by the provisions of the Act, as now or hereafter amended. Any provision of this Lease, whether or not incorporated herein by reference, shall be controlled, limited, and otherwise modified so as to limit any liability of the City to the above-cited laws.

**16. Sublease and Assignment.** The Foundation may not assign all or any part of this Lease or sublease all or any part of the Premises to any other person or entity; provided, however, that the Foundation may sublease all or any part of the Premises to a nonprofit IRS-designated 501(c)(3), 501(c)(4), or 501(c)(6) entity, or to a local or county governmental entity. The Foundation shall promptly notify the City in writing of any such sublease.

**17. Holding Over.** Any holding over after the expiration of the term of this Lease or any extended term thereof, with the consent of the City, shall be construed to be a tenancy from month-to-month on the same terms and conditions and at the same Rent provided for herein.

**18. Total or Partial Destruction.** If during the term of this Lease the Premises or any part thereof is destroyed or is so damaged by fire or other casualty so as to become uninhabitable, then the City may elect to terminate this Lease. In the event the City elects to terminate this Lease, the Foundation immediately shall surrender the Premises to the City; provided, however, that the City shall exercise such option to terminate by written notice to the Foundation within thirty (30) days after such destruction or damage. In such event, the Foundation shall be entitled to a prorated return of Prepaid Rent. In the event the City does not elect to terminate this Lease, this Lease shall continue in full force and effect, and the City shall repair the Premises with all reasonable speed, placing the same in as good a condition as it was at the time of the destruction or damage and for that purpose may enter upon the Premises. If the Premises is only slightly injured by fire or the elements so as to not render the same uninhabitable and unfit for occupancy, then the City shall repair the same as soon as practicable.

**19. Termination For Default.** In the event either party fails to perform according to the provisions of this Lease, such party may be declared in default. If the defaulting party does not cure said breach within thirty (30) days of written notice thereof, the non-defaulting party may terminate this Lease immediately upon written notice of termination to the other. In the event of default by the Foundation, the City shall have the right, at its election and while such

event of default shall continue, to give the Foundation written notice of its intention to terminate this Lease on the date of such notice or any later date specified therein. On the specified date, the Foundation's right to possess the Premises shall cease, and this Lease shall be terminated. The City may then re-enter and take possession of the Premises or any part thereof, repossess the same, expel the Foundation and those claiming through or under the Foundation, and remove the effects of both or either (forcibly, if necessary) without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrearages of Rent or breach of covenants. In the event of default by the City, the Foundation shall be entitled to a prorated return of Prepaid Rent.

**20. Notices.** Written notices shall be directed as follows and shall be deemed received when hand-delivered or emailed, or three (3) days after being sent by certified mail, return receipt requested:

**To the City:**

City of Loveland  
 Attn: William D. Cahill, City Manager  
 500 E. Third Street, Suite 330  
 Loveland, CO 80537  
 (970) 962-2306  
 Email: [cahilb@ci.loveland.co.us](mailto:cahilb@ci.loveland.co.us)

**To the Foundation:**

Community Foundation of Northern Colorado  
 Attn: Ray Caraway, President  
 4745 Wheaton Drive, Suite 100  
 Fort Collins, CO 80525  
 (970) 488-1980  
 Email: [ray@CommunityFoundationNC.org](mailto:ray@CommunityFoundationNC.org)

**21. Time of the Essence.** It is agreed that time shall be of the essence of this Lease and each and every provision hereof.

**22. Miscellaneous.** This Lease shall be construed according to its fair meaning and as if prepared by both parties and shall be deemed to be and contain the entire understanding and agreement between the parties. There are no other terms, conditions, promises, understandings, statements, or representations, express or implied, concerning this Lease unless set forth in writing and signed by the parties. The benefits and burdens of this Lease shall inure to and be binding upon the parties and their respective successors and permitted assigns. This Lease shall be governed by, and its terms construed under, the laws of the State of Colorado. Nothing contained in this Lease shall be deemed or construed by the parties or any third party as creating the relationship of principal and agent or a partnership or a joint venture between the parties, it being agreed that none of the provisions herein or any acts of the parties shall be deemed to create a relationship between the parties other than the relationship of landlord and tenant. Upon the expiration or termination of this Lease, the Foundation agrees to peaceably surrender the Premises to the City in broom-clean condition and good repair, normal wear and tear excepted.

**Signed** by the parties on the date written above.

**City of Loveland**

By:

---

William D. Cahill, City Manager

ATTEST:

---

### City Clerk

APPROVED AS TO FORM:

Anna Olof  
Assistant City Attorney

Community Foundation of Northern Colorado

By:

Title:

STATE OF COLORADO )  
 ) ss.  
COUNTY OF LARIMER )

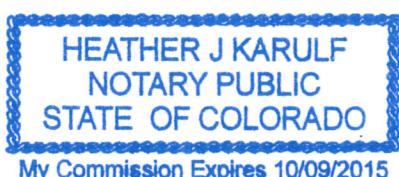
The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of February, 2012 by Ray Caraway as President of the Community Foundation of Northern Colorado.

Notary's official signature

SEAL

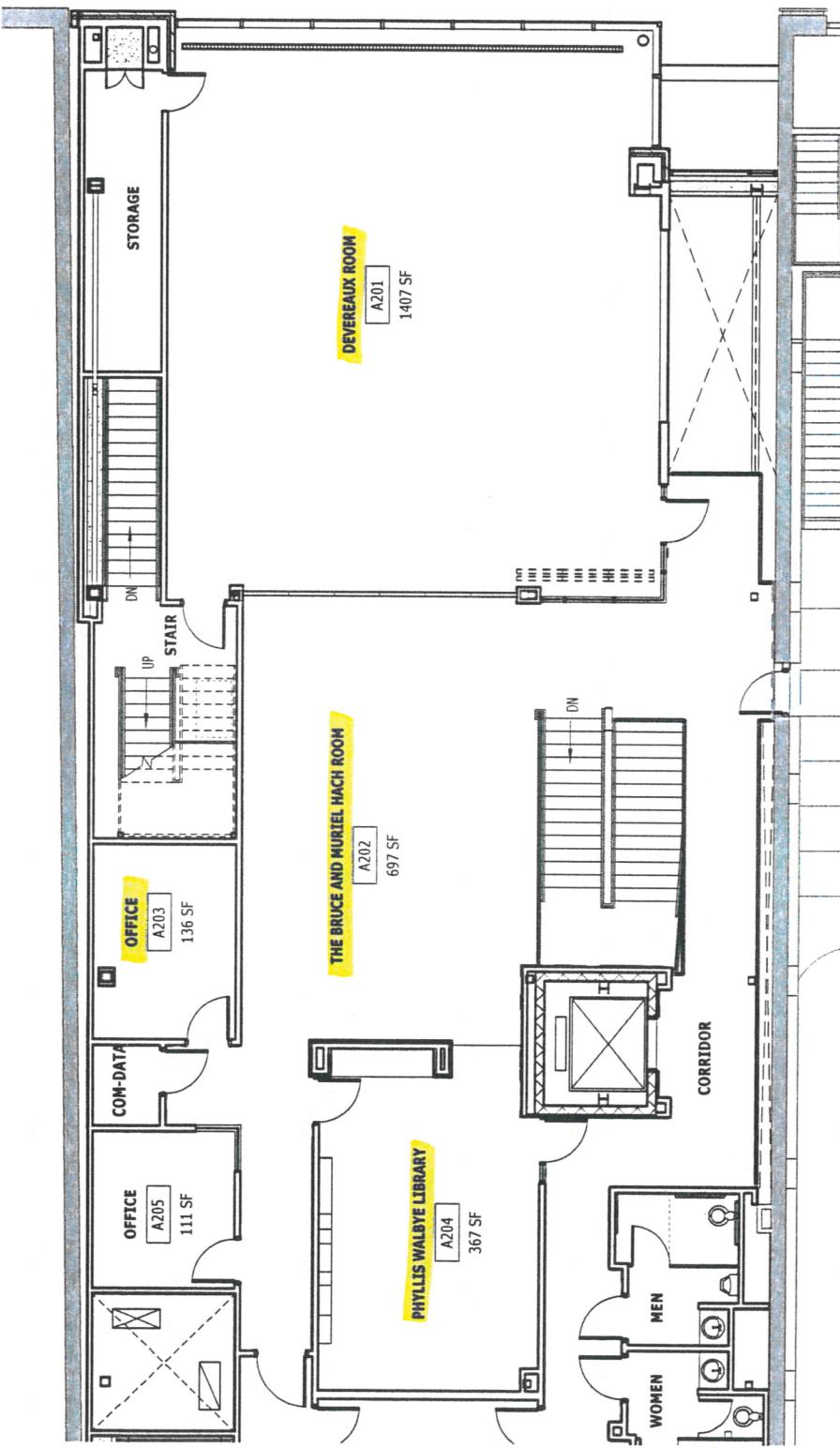
10/9/2015

Commission expiration date



**Exhibit A**

See attached diagram.



## 1 Plan @ Level 2

1/8" = 1'-0"



4745 Wheaton Drive, Suite 100 • Fort Collins, CO 80525 • Phone (970) 224-3462 • Fax (970) 488-1990 • [www.CommunityFoundationNC.org](http://www.CommunityFoundationNC.org)

Bill Cahill, City Manager  
City of Loveland  
500 E. 3<sup>rd</sup> Street  
Loveland, Colorado 80537

Dear Mr. Cahill,

The Community Foundation of Northern Colorado is pleased to play a role in the Rialto Bridge Project and is conducting a capital campaign to raise \$700,000 to help build the Rialto Bridge. We are excited to be part of this wonderful project that will benefit the City of Loveland and we look forward to its completion.

The Rialto Bridge Fund (a component fund of the Community Foundation) and capital campaign was established in November 2010, and to date has received gifts and pledges exceeding \$450,000. The capital campaign was initiated with a preliminary \$100,000 commitment from the Community Foundation. The Fund has also qualified for the Enterprise Zone state tax credit. In addition, the Community Foundation is providing staff and volunteer leadership to conduct the campaign and will cover all administrative costs related to the campaign. All contributions go to build the publicly owned portions of the Rialto Bridge project and support the completion of the building.

The Rialto Bridge Project is a "Public-Private-Philanthropic Partnership" modeled after dozens of similar projects in other communities. The Project consists of newly constructed public space and private space immediately adjacent to the historic Rialto Theater. The private space will be paid for with private investment dollars. The public space will be paid for by the City of Loveland and the charitable contributions from the Community Foundation's Rialto Bridge Fund. The Community Foundation agrees to fund a total capital contribution of \$700,000 on or before December 31, 2011, according to the attached distribution schedule.

While the contributions from the Community Foundation are purely charitable in nature and designed to support and encourage revitalization of Downtown Loveland, the Community Foundation understands that the City will rely on the commitment to make this contribution in entering into a contract to construct the project. In addition, the City of Loveland agrees to lease approximately 136 square feet of office space to be constructed on the second floor of the building to the Community Foundation for 20 years at a base rental rate of \$1 per year. The Community Foundation will pay for all operations and maintenance costs associated with the office space at the City's annual rate, currently \$6 a square foot per year. As further consideration for the lease of the office space and in consideration of the City's agreement to make the Walby conference room (also to be located on the second floor of the building) available to community non-profit entities for three years following completion, the Community Foundation also agrees to pay the operations and maintenance costs for the Walby Conference Room for the first three years following completion of construction, at the City's annual rate.

The parties will confirm this arrangement by executing a lease of the office space upon completion of the project.

#### BOARD OF TRUSTEES

Bruce Hach, Chair  
Ray Caraway, President  
LuAnn Ball  
Randy Davis  
Constance Dohn  
Joe Gebhardt  
Krishna Murthy  
Wynne Odell  
Chris Osborn  
Spiro Palmer  
Tom Patterson  
Eric Peterson  
Troy Peterson  
Kathay Rennels  
John Roberts  
Jean Sutherland

***Our Vision: To be the regional leader in building a more engaged, philanthropic and visionary community***

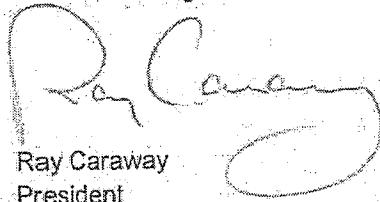
*The Community Foundation of Northern Colorado meets National Standards for operational quality, donor service and accountability.*



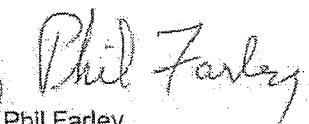
Based on discussions with City staff, the Community Foundation agrees that any contributions to the Rialto Bridge Fund in excess of \$700,000 may be used to enhance the tenant finish for the public space or additional public art. In the event the \$700,000 goal is exceeded by \$40,000 or more, the Community Foundation reserves the right to maintain a portion of this excess in a permanent endowment fund to provide an annual distribution for programming and events related to the project's public community space in the Rialto Bridge.

We look forward to working with you on this exciting project that will enhance Downtown Loveland and the future of the entire community.

With kindest regards,



Ray Caraway  
President



Phill Farley  
Director of Loveland Community Relations

Enclosure

## Rialto Bridge Project – Payment Schedule

Date	Amount
April 1, 2011	\$175,000
June 1, 2011	\$175,000
August 1, 2011	\$200,000
December 31, 2011	\$150,000



**CITY OF LOVELAND**  
**FINANCE DEPARTMENT**  
 Civic Center • 500 East Third • Loveland, Colorado 80537  
 (970) 962-2695 • FAX (970) 962-2900 • TDD (970) 962-2620

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**AGENDA ITEM:** 12  
**MEETING DATE:** March 6, 2012  
**TO:** City Council  
**FROM:** William D. Cahill, City Manager  
**PRESENTER:** Bill Cahill

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**TITLE:**

Review and acceptance of Report of the City Council's Annual Advance

**RECOMMENDED CITY COUNCIL ACTION:** Adopt a motion accepting and approving the Report of the City Council's Annual Advance held on January 21, 2012.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

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**DESCRIPTION:**

This is an administrative action accepting and approving the Report of the City Council's Annual Advance held on January 21, 2012.

**BUDGET IMPACT:**

Positive  
 Negative  
 Neutral or negligible

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**SUMMARY:**

The City Council held its Annual Advance on January 21, 2012. This annual event is intended for the Council to set major goals and priorities for the coming year. The Council's work is contained in the Report (Attachment 2), and is further summarized in the one-page Summary (Attachment 1). These documents have been previously supplied to Council members in draft form.

The Report provides a complete record of the proceedings of the Advance. The Summary is based on the Advance, and reflects further staff work and refinement to identify responsible lead parties for each action, as well as selection of project milestones to be achieved this year.

As an additional accountability measure, staff anticipates providing quarterly reports to the City Council concerning progress on each of the priority actions. A mid-year review will also be scheduled for August 2012 as a study session.

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**REVIEWED BY CITY MANAGER:**

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**LIST OF ATTACHMENTS:**

1. Summary of City Council Advance
2. Report of the City Council Advance



## Summary: City of Loveland 2012 Council Goals and Priorities

Goals and Activities	Lead Responsibility	Schedule
<b>Goal 1, Economic Vitality</b>		
1.1 Develop a Highway 287 business corridor development plan	Development Services/Economic Development	Draft Work Plan Scope by December 2012
1.2 Market Loveland aggressively for economic development	Economic Development	Marketing for primary employers, retail, downtown, visitation and creative sector operational by September 2012
1.3 Move forward with expansion for the Loveland Museum	Cultural Services	Secure architect and launch capital campaign by August 2012
1.4 Airport area economic development planning	Airport/Economic Development	Development plan to Airport Steering Committee by December 2012
1.5 Highway 402 Corridor Plan and expansion of County IGA	Development Services	IGAs with affected jurisdictions by September 2012; Draft Corridor Plan by December 2012
1.6 Continue efforts to restore the Pulliam Building	Economic Development	Operating plan and finance applications by December 2012
1.7 Carry out a signage program to direct visitors and residents to important Loveland destinations	Economic Development	Complete placement of 1st phase signs by October 2012
<b>Goal 2, Public Safety</b>		
2.1 Develop a long-term funding plan for Police and Fire, including a long-term Police staffing plan	Police, Fire	Police staffing plan conceptually approved by September 2012; draft safety funding plan to Council by December 2012
2.2 Plan for Fire Station 2 and acquire property	Fire	Land acquisition and conceptual review approval by December 2012

Goals and Activities	Lead Responsibility	Schedule
<b>Goal 3, Infrastructure Quality</b>		
3.1 Accelerate the undergrounding of existing power lines	Water and Power	Council direction by June 2012 to incorporate into 2013 budget
3.2 Power infrastructure needs: short - long term strategies	Water and Power	Council direction on transmission and distribution by July 2012
3.3 Water infrastructure needs: short - long term strategies	Water and Power	Council direction on infrastructure and financing by June 2012
3.4 Carry out a cross connection / backflow control program	Water and Power	Council approval of program by April 2012
3.5 Develop a more stable funding stream for street maintenance	Public Works	Street maintenance funding concept to Council by June 2012
3.6 Plan for Public Works Service Center expansion	Public Works	Conceptual design complete by August 2012
<b>Goal 4, Financial and Administrative</b>		
4.1 Capital Expansion Fees Study	Development Services	Draft study to Council by August 2012
<b>Implementation</b>		
CC.1 Review City Council meeting procedures and guidelines	City Attorney and City Manager	Council consideration of amended procedures by August 2012
<b>Continued Actions for 2011</b>		
11.1.1 Regional Crime Lab	Police	Project launch by June 2012
11.2.1 Economic Development Strategy	Economic Development	Council adoption by March 2012
11.2.2 Downtown Catalyst Project	Economic Development	Project agreement by June 2012
11.2.8 Artspace Project	Economic Development	Project financing by December 2012
11.4.2 Raw Water Master Plan	Water and Power	Council adoption by June 2012
11.5.5 Transportation Master Plan	Public Works	Council adoption by October 2012



# City of Loveland

## City Council Advance

January 21, 2012

Mayor Cecil Gutierrez  
Mayor Pro Tem Cathleen McEwen  
Council Member Phil Farley  
Council Member John Fogle  
Council Member Daryle Klassen  
Council Member Hugh McKean  
Council Member Joan Shaffer  
Council Member Chauncey Taylor  
Council Member Ralph Trenary

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## **Introduction**

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The purpose of the Loveland City Council's annual Advance is to set priorities and goals for the year. This involves a review of progress on the past year's goals; identification of topic areas for discussion; ranking issues in priority order; and considering issues of meeting management and governance.

The Loveland City Council Advance was held January 21, 2012, at the Loveland Museum and Gallery. Dallas Everhart served as facilitator. All Council members attended, as did members of the City's executive Management Team. The Agenda for the Advance is included as Exhibit 1.

The one-day Advance was preceded by Council and staff submittal of possible topics for discussion, and a ranking exercise at the January 10 City Council study session to narrow the list of topics to a manageable number for the January 21 discussion.

## **Review of The Previous Year's Goals**

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At the Study Session preceding the Advance, there was a review of last year's goals, and progress made. These are found in Exhibit 2.

## **Goals for 2012**

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Four goal areas were identified for 2012 as a result of tabulating Council priorities. Specific action items were identified for each of the four goal areas, and priorities assigned. The four goal areas are:

1. Economic Vitality
2. Public Safety
3. Infrastructure Quality
4. Financial Responsibility

The following lists of action items are presented in order of their priority within each goal area.

## Goal 1, Economic Vitality

### **1.1 Develop a Highway 287 business development plan**

Create a plan for the Highway 287 corridor to guide its development and improve the quality of development along the length of the corridor. Such a plan would call for effort and participation by Development Services, Economic Development, Public Works, Water & Power, and other City staff.

### **1.2 Market Loveland aggressively for economic development**

The draft Economic Development Strategy calls for several marketing efforts, including industrial, retail, and tourism. Increase funding support for marketing, and assure that all parts of the marketing effort are integrated and support one another strategically.

### **1.3 Move forward with expansion of the Loveland Museum**

A vision has been described for a transformed Museum, which could become a major cultural and economic destination for northern Colorado. Total project cost is currently estimated at \$15 million, of which about \$3 million is available. Project design and fundraising, as well as operational plans, need development.

### **1.4 Airport area economic development planning**

More deliberately and specifically include this area in the City's economic development planning and strategy. There are significant land holdings and development opportunities surrounding the Airport, which need to be aggressively pursued. This will be a joint effort with the City of Fort Collins, which co-owns the Airport.

### **1.5 Highway 402 Corridor Plan and Expansion of County IGA**

State Highway 402 will be the primary access and gateway to the new Rocky Mountain Center for Innovation and Technology. The development of a corridor plan for State Highway 402 and expansion of the City's IGA with Larimer County (IGA) is now even more important. The County has never adopted the Loveland Overlay Zone for a large portion of the south east quadrant of the Loveland Growth Management Area, including the State Highway 402 corridor extending west from I-25 to approximately South St. Louis Avenue. This planning effort would require an extensive public outreach component and collaboration effort with property owners in the study area, the Larimer County Commissioners and planning staff, the Low Point Sanitation District, Johnstown Town Board, CDOT and the Little Thompson Water District.

### **1.6 Continue efforts to restore the Pulliam Building**

Initial conceptual studies have been done to restore the Pulliam Building, and repurpose it to a multiple-use auditorium. Total project cost is currently estimated at about \$3 million, and project proponents have developed a draft business plan intended to reduce reliance upon the City's General Fund for operational costs. Community fund raising is proceeding but not yet fully in gear. The project would be a collaboration between a nonprofit board and the City.

### **1.7 Carry out a signage program to direct visitors and residents to important Loveland destinations**

Develop and implement an action plan for signs to direct people to shopping opportunities and attractions. A wayfinding sign design has been previously developed by Public Works, providing a foundation for action. In the Lodging Tax budget recently adopted by City Council for tourism promotion, an allowance of \$50,000 was made for "product improvement", which is primarily intended for signage.

In addition, the Council decided that the following issue would be referred to the City Council's Economic Development Committee for review:

*Reconsider the Loveland Jobs Development Fund proposal.* The Loveland Jobs Development Fund proposal was considered by City Council about a year ago as a way of investing a small portion of the City's investment portfolio in local business, and tabled at that time. Two objectives are addressed: local job creation, and an increase in the portfolio's rate of return. Increased portfolio risk would also result.

## Goal 2, Public Safety

### **2.1 Develop a Long-Term Funding Plan for Police and Fire, including a Long-Term Police Staffing Plan**

Long-term staffing planning has previously been done for the Fire Department. Police have developed significant materials for long-term staffing, and a new effort has just begun to develop a long-term (ten year) picture for Police Department. The City's share of Fire Authority's Plan B Staffing Plan should be determined for the 2013 Budget. Funding for public safety will need to be discussed by Council.

### **2.2 Plan for Fire Station 2 and Acquire Property**

To meet the needs of northwest Loveland, the existing Fire Station 2 is not well-located. A new location has been considered near Wilson and 29<sup>th</sup> Streets, but has not been acquired. No plans have yet been started for a new Station 2, and no clear plan for re-use or sale of the existing property has been developed. Total project cost is estimated at about \$2.9 million, with operational cost increases of \$986,000 annually. The project is currently scheduled for construction in 2013 in the Capital Program.

## Goal 3, Infrastructure Quality

### **3.1 Accelerate the undergrounding of existing power lines**

The current program to bury existing residential power lines is in place, but there may be options for accelerating and expanding that effort. This would require staff review of costs and possible funding sources, and Council consideration of options.

### **3.2 Power Infrastructure Needs: Short - Long Term Strategies**

On the Generation and Transmission side, we are working with the other owner cities and staff at PRPA to plan the City's long term generation needs. This takes into consideration a mix of fuels, renewable portfolio standards and regulatory impacts. Agreements with other utilities in the Western U.S. play a major role in accomplishing economies of scale and increased reliability through diversification. On the Retail distribution side, we are planning for significant capital improvements to enhance reliability by making the system more flexible in how loads can be transferred from substation to substation. Staff is working on updating the system model and from the results of this distribution system study; a revised five year capital improvement plan will also be created.

### **3.3 Water Infrastructure Needs: Short - Long Term Strategies**

In the short term, continuous upgrades at the Chasteen's Grove Water Treatment facility are required to replace aging equipment at this \$70 million facility. In addition, upgrades are also necessary to meet

increasingly stringent Federal (EPA) and Colorado Department of Public Health and Environment (CDPHE) standards for water treatment. Increasing peak summer demands in the coming years will also require an approximately \$10 Million plant upgrade. The Water Division is also tracking increasing maintenance and replacement costs associated with the \$90 million water distribution system due to aging infrastructure. These trends in expenses will likely require significant capital investments through sustained rate increases and/or bonding in the near future. Long term strategies include addressing the ongoing responsibilities for infrastructure rehabilitation/replacement; large-scale raw water storage; and options for additional water treatment capacity at a new location. Staff will continue to seek opportunities for regional cooperative efforts with neighboring water providers that may offer economies of scale that benefit all parties.

### ***3.4 Carry out a Cross Connection / Backflow Control Program***

The Water Division is in the process of implementing an enforcement mechanism to further protect the public water supply from potential hazards caused by backflow. Plans are to have the Ordinance and cross connection control program be presented at the January 31, 2012 City Council study session followed by the first and second readings of the Ordinance at the regularly scheduled City Council meetings in February.

### ***3.5 Develop a More Stable Funding Stream for Street Maintenance***

Street Maintenance Funding has been a consistent priority for the City over the years. However, the viability of using the TABOR Reserve as a long term solution should be reviewed by the Council, and other solutions discussed.

### ***3.6 Plan for Public Works Service Center Expansion***

Beginning in 1992, a Public Works Department facility upgrade and expansion based at the Service Center first appeared in City's Capital Plan. In 2012, \$400,000 is budgeted for programming and design to establish the projected project costs and establish the likely financing mechanism for this project. The current vision moves the Public Works Streets, Stormwater, and Solid Waste Divisions to the existing area where the School District was previously located. The project cost is estimated at \$6,100,000 plus \$500,000 for the MOC remodel needs. Of the \$6.1M for the Service Center, approximately 50% will be paid by the Stormwater and Solid Waste Enterprise funds, while the balance is a general fund responsibility for the Streets Division; this is based on a calculation of usage of all phases of the building.

## **Goal 4, Financial and Administrative**

### ***4.1 Complete the Five Year Update of the Capital Expansion Fee System***

Every five years, the City performs a major update of the Capital Expansion Fee system to take into account the additions of capital improvements and shifts in the economic base of the community. The last update was completed in 2007. Only growth-related expenses are included in the CEF fees. The basic theory underlying the Capital Expansion Fee System is that growth should pay its fair share of the costs that it imposes on the City. The update will include extensive public outreach and multiple meetings with City Council, and city advisory commissions. The five-year update is expected to be completed by in-house staff without additional consulting costs.

## **Informational Items for Study Sessions**

The following items were identified as informational in character and were selected for future Study Sessions throughout the course of 2012:

- Downtown Loveland Strategic Plan
- Airport report and discussion
- Status of West Eisenhower overlay plan
- Five year historical snapshot of the city's budget
- Budgeting methods and guidance
- North Front Range Metropolitan Planning Organization
- Planning for Highway 34 traffic improvements

## **Governance Issues**

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Several different issues for improving City Council meeting processes were discussed, particularly for allowing public comment during meetings. The Council discussion focused on ways to encourage citizen participation most effectively and efficiently. The City Manager and City Attorney are to work together to prepare new meeting procedures for Council's future consideration. Also, they shall provide Council with proposed revisions to the current language in Council's "Agenda Summary" relating to the conduct of its meeting that are consistent with the new procedures.

## **Follow-Up and Implementation**

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The following specific measures will be carried out to implement the goals and priorities from the Advance.

1. Publish this Report of the Advance, and present it at a City Council Study Session for consensual ratification.
2. Create periodic reports to Council on the goals and priorities established.
3. Hold a Mid-Year Review to monitor the results to date on the goals, and make any necessary mid-course corrections.

## Exhibit 1: Agenda for the Advance



**City Council Advance Agenda**  
**January 21, 2012**  
**8:00 – 5:00**  
**Loveland Museum and Gallery**

8:00	Introductions and Expectations (commit to commit)
8:15	Review draft list of activities (understanding) Council provides interpretation of activity, status , and outcomes Council and Staff provide initial resource requirements
9:45	Morning Break following discussion of activities
10:00	Draft activity priorities (CC votes 1 dot per priority) Give each Council member about 10 to 15 dots (25% of projects)
10:15	Categorize activities to identify core goals
10:30	Identify background and current issues related to core goals
Noon	Lunch
12:30	Review priority activities, resources, current status and deliverables
1:30	Modify council priority to current list of activities by core goals Eliminate items with no or few votes, reallocate council dots Seek majority support for priorities Identify deliverable, champion, resources and deadlines
3:00	Afternoon Break
3:15	Governance
4:30	Commitments to new outcomes as a team

## Exhibit 2: 2011 Advance Topics and Plan

Summary: City of Loveland Council Goals and Priorities for 2011		Lead	Responsibility	Schedule
Goals and Activities				
<b>Goal 1, Public Safety: Continue public safety as the key priority of the City.</b>				
1.1 Regional Crime Lab	Police		IGA by Dec 2011	
1.2 Consolidation of City & Rural District for Fire/Rescue Services	Fire		Draft IGA by Dec 2011	
1.3 Public Safety Infrastructure	Police, Fire		Ongoing	
<b>Goal 2, Economic Vitality: Build and strengthen Loveland's economic vitality.</b>				
2.1 Economic Development Strategy	Economic Development		Complete Nov 2011	
2.2 Downtown Catalyst Projects	Development Services		Developer Selection July 2011	
2.3 Redevelopment of the Agilent Campus, including public engagement	City Manager, Econ Dev't		Devel Agrmt Aug 2011	
2.4 Rialto Bridge	Development Services		Construction underway May 2011	
2.5 Airport Growth and Capital Projects	Public Works		Major project summer 2011	
2.6 Targets of Opportunity	as needed		Ongoing	
2.7 Regionalism and Annexation Agreement with Johnstown	Council, City Manager		Discussions by Sept 2011	
2.8 Artspace Project	Development Services		Finance application by July 2011	

	2.9 Pulliam Building	Development Services	Ongoing	
	2.10 "Black Boxes" (significant vacant buildings)	Economic Development	Program adopted by Nov 2011	
	<b>Goal 3, Financial Responsibility: Maintain Loveland's healthy financial position.</b>			
	3.1 Financial Sustainability Strategy	Finance, City Manager	Complete May 2011	
	3.2 "De-Brucing" Election	Finance, CFAC, Council	Ballot Measure drafted July 2011	
	3.3 Analyze and Reduce Reliance on Intergovernmental Revenue	Finance	Complete Oct 2011	
	3.4 Capital Expansion Fees (CEFs)	Dev Svcs, Fiscal Advisor	Complete July 211	
	<b>Goal 4, Infrastructure Quality: Maintain and develop Loveland's infrastructure.</b>			
	4.1 Street Maintenance Funding	Public Works	Ongoing	
	4.2 Water Shares, Supply and Infrastructure	Water & Power	Master Plan complete Aug 2011	
	4.3 Electric Power Infrastructure	Water & Power	Ongoing	
	<b>Goal 5, Quality of Life: Preserve and enhance Loveland's quality of life.</b>			
	5.1 Public policy concerning poverty and homelessness	Community Partnership	Ongoing	
	5.2 Environmental Sustainability Plan	Public Works	Draft to Council Sept 2011	
	5.3 Comprehensive Plan Update	Development Services	Draft to Council Dec 2011	
	5.4 Visual Arts Commission: Selection Process for Public Art	Cultural Services	Council Review by Sep 2011	

	5.5 Transportation Plan	Public Works	Draft to Council Dec 2011	
	<b>Governance</b>			
	G.1 Council Meetings: Combine Council comment periods to one	City Manager	By May 2011	
	G.2 Print suggested time limits on City Council study session items	City Manager	by April 2011	
	G.3 Council members contact staff in advance with questions	Council	Ongoing	
	G.4 Improve staff reports thru: redlining, history of issues, use of PowerPoint: include options for City Council action	City Manager	Ongoing	
	G.5 Pilot test of laptops - iPods with interested Council Members	Information Technology	by July 2011	
	G.6 Provide Communications policy to Council Members	Assistant City Manager	by April 2011	
	G.7 Resume Legislative Day	Assistant City Manager	by June 2011	
	G.8 Review Boards & Commissions as part of financial sustainability process	City Manager	by June 2011	
	G.9 Improve Process for Key Management Evaluations	Council	by Dec 2011	
	<b>Implementation</b>			
	I.1 Publish Report of the Advance	City Manager	By March 2011	
	I.2 Periodic Reporting on progress toward Goals	City Manager	Quarterly	
	I.3 Mid-Year Review with City Council and management staff	CM/Council	By Aug 2011	

## Exhibit 3: Compendium of Possible Topics

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This is a listing of all topics suggested for priority setting. Some were eliminated from further consideration during the tabulation of priorities. The number in parentheses preceding each item is the number of Council votes each received in the January 10 Study Session.

### **Public Safety**

(3)Plan the Police Firing Range for Implementation. The current location has a number of problems and the facility, while improved, is not adequate. A tentative concept for a new location has been developed (Airport). Planning needs to be done, including design, cost estimation, review of permitting issues, and any potential phasing.

(6)Plan for Fire Station 2 and Acquire Property. To meet the needs of northwest Loveland, the existing Fire Station 2 is not well-located. A new location has been considered near Wilson and 29<sup>th</sup> Streets, but has not been acquired. No plans have yet been started for a new Station 2, and no clear plan for re-use or sale of the existing property has been developed. Total project cost is estimated at about \$2.9 million, with operational cost increases of \$986,000 annually. The project is currently scheduled for construction in 2013 in the Capital Program.

(3)Complete and Adopt a Long-Term Police Staffing Plan. This type of planning has previously been done for the Fire Department. Police have developed significant materials for long-term staffing, and a new effort has just begun to develop a long-term (ten year) picture for Police Department.

(4)Develop a Long-Term Funding Plan for Police and Fire. This issue was discussed by Council and established as a priority for last year (2011). The City's share of Fire Authority's Plan B Staffing Plan should be determined for the 2013 Budget.

### **Economic Vitality**

(3)Market or Develop the 25/402 Property. The Ehrlich Addition property has been re-zoned to facilitate its sale to a developer. However, the obligation of the City to extend sewer service in the event of development presents an additional financial burden to the City. Discussions with Johnstown and the Low Point Sanitation District regarding a more cost effective approach for sewer service would be advisable prior to sale of the property. Due to the high inventory of available property along I-25, the land values in the current market are severely diminished. Efforts to develop a strategy that may include carrying the property for some time would require significant staff resources and formal policy decisions by Council.

(1)Bring the Artspace project to construction. Artspace has developed a concept for a 35-unit residential complex for artists centered on the Feed & Grain property, and has the property under contract. Financing will be sought from a mix of low-income housing tax credits, bank loan, philanthropy, and other grant sources. Total project cost is currently estimated at about \$8.5 million, which includes some funding to stabilize and preserve the Feed & Grain building, but does not provide for its full restoration and re-use.

(5)Move forward with expansion of the Loveland Museum. A vision has been described for a transformed Museum, which could become a major cultural and economic destination for northern Colorado. Total project cost is currently estimated at \$15 million, or which about \$3 million is available. Project design and fundraising, as well as operational plans, need development.

(3)Continue efforts to restore the Pulliam Building. Initial conceptual studies have been done to restore the Pulliam Building, and repurpose it to a multiple-use auditorium. Total project cost is currently estimated at about \$3 million, and project proponents have developed a draft business plan intended to reduce reliance upon the City's General Fund for operational costs. Community fund raising is proceeding but not yet fully in gear. The project would be a collaboration between a nonprofit board and the City.

(3)Carry out a retail recruitment program communitywide in scope. Build Loveland's economy through attraction of retailers; partner with the private sector to attract and retain retailers. Establish quarterly meetings with local private retail recruiters and brokers.

(3)Develop a Highway 287 business development plan. Create a plan for the Highway 287 corridor to guide its development and improve the quality of development along the length of the corridor. Such a plan would call for effort and participation by Development Services, Economic Development, Public Works, Water & Power, and other City staff.

(2)Evaluation of Centerra after eight years of history. Review and evaluate Centerra's financial and economic performance, compared to original projections and with consideration of broader economic conditions. Review and evaluate its contributions to regional infrastructure. Consider all aspects of the project, including the URA and Metro Districts. Use the analysis to reprioritizing future regional improvements as needed, and create projections to meet the funding requirements for present obligations and future regional improvements. Such evaluation and projection are a major work effort for staff or consultants.

(2)Carry out a signage program to direct visitors and residents to important Loveland destinations. Develop and implement an action plan for signs to direct people to shopping opportunities and attractions. A wayfinding sign design has been previously developed by Public Works, providing a foundation for action. In the Lodging Tax budget recently adopted by City Council for tourism promotion, an allowance of \$50,000 was made for "product improvement", which is primarily intended for signage.

(4)Market Loveland aggressively for economic development. The draft Economic Development Strategy calls for several marketing efforts, including industrial, retail, and tourism. Increase funding support for marketing, and assure that all parts of the marketing effort are integrated and support one another strategically.

(3)Reconsider the Loveland Jobs Development Fund proposal. The Loveland Jobs Development Fund proposal was considered by City Council about a year ago as a way of investing a small portion of the City's investment portfolio in local business. Two objectives are addressed: local job creation, and a small increase in the portfolio's rate of return. Increased portfolio risk would also result. The proposal was tabled by Council at that time, pending additional work.

(2)Airport area economic development planning. More deliberately and specifically include this area in the City's economic development planning and strategy. There are significant land holdings and development opportunities surrounding the Airport, which need to be aggressively pursued.

### (5)402 Corridor Plan and Expansion of County IGA

State Highway 402 will be the primary access and gateway to the new Rocky Mountain Center for Innovation and Technology. The development of a corridor plan for State Highway 402 and expansion of the City's IGA with Larimer County (IGA) is now even more important. The County has never adopted the Loveland Overlay Zone for a large portion of the south east quadrant of the Loveland Growth Management Area, including the State Highway 402 corridor extending west from I-25 to approximately South St. Louis Avenue. This planning effort would require an extensive public outreach component and collaboration effort with property owners in the study area, the Larimer County Commissioners and planning staff, the Low Point Sanitation District, Johnstown Town Board, CDOT and the Little Thompson Water District. The primary constraint to this project would be funding necessary to hire a consultant to prepare and implement a public outreach plan. Estimated cost for consulting services would be \$35,000 - \$50,000, which is currently not in the 2012 budget.

### **Infrastructure Quality**

(5)Power Infrastructure Needs: Short - Long Term Strategies. On the Generation and Transmission side, we are working with the other owner cities and staff at PRPA to plan the City's long term generation needs. This takes into consideration a mix of fuels, renewable portfolio standards and regulatory impacts. Agreements with other utilities in the Western U.S. play a major role in accomplishing economies of scale and increased reliability through diversification. On the Retail distribution side, we are planning for significant capital improvements to enhance reliability by making the system more flexible in how loads can be transferred from substation to substation. Staff is working on updating the system model and from the results of this distribution system study; a revised five year capital improvement plan will also be created. Council feedback is desired.

(5)Water infrastructure Needs: Short - Long Term Strategies. In the short term, continuous upgrades at the Chasteen's Grove Water Treatment facility are required to replace aging equipment at this \$70 million facility. In addition, upgrades are also necessary to meet increasingly stringent Federal (EPA) and Colorado Department of Public Health and Environment (CDPHE) standards for water treatment. Increasing peak summer demands in the coming years will also require an approximately \$10 Million plant upgrade. The Water Division is also tracking increasing maintenance and replacement costs associated with the \$90 million water distribution system due to aging infrastructure. These trends in expenses will likely require significant capital investments through sustained rate increases and/or bonding in the near future. Long term strategies include addressing the ongoing responsibilities for infrastructure rehabilitation/replacement; large-scale raw water storage; and options for additional water treatment capacity at a new location. Staff will continue to seek opportunities for regional cooperative efforts with neighboring water providers that may offer economies of scale that benefit all parties. Council feedback is desired.

(2)Carry out a Cross Connection / Backflow Control Program. The Water Division is in the process of implementing an enforcement mechanism to further protect the public water supply from potential hazards caused by backflow. Plans are to have the Ordinance and cross connection control program be presented at the January 31, 2012 City Council study session followed by the first and second readings of the Ordinance at the regularly scheduled City Council meetings in February. Council feedback is desired.

(2)Accelerate the undergrounding of existing power lines. The current program to bury existing residential power lines is in place, but there may be options for accelerating and expanding that

effort. This would require staff review of costs and possible funding sources, and Council consideration of options.

(1)Highway 34 Traffic Improvements. The City continues to work with CDOT on long term improvements on US 34, the objective as development continues is the 3-laning each direction of 34 from I-25 to 287. The plan is defined in the US 34 Environmental Assessment and the City's Transportation Master Plan completed in 2008. West of 287 Council has previously passed legislation limiting this road to two lanes in each direction. Staff has also pursued substantial grant funds to improve traffic signal technology in the corridor; although an additional \$2.5 M is needed to upgrade all the signal technology. Are there alternative solutions to closing this gap?

(1)Develop a More Stable Funding Stream for Street Maintenance. Street Maintenance Funding has been a consistent priority for the City over the years. However, the viability of using the TABOR Reserve as a long term solution should be discussed by the Council.

(2)Plan for Public Works Service Center Expansion. Beginning in 1992, a Public Works Department facility upgrade and expansion based at the Service Center first appeared in City's Capital Plan. In 2012, \$400,000 is budgeted for programming and design to establish the projected project costs and establish the likely financing mechanism for this project. The current vision moves the Public Works Streets, Stormwater, and Solid Waste Divisions to the existing area where the School District was previously located. The project cost is estimated at \$6,100,000 plus \$500,000 for the MOC remodel needs. Of the \$6.1M for the Service Center, approximately 50% will be paid by the Stormwater and Solid Waste Enterprise funds, while the balance is a general fund responsibility for the Streets Division; this is based on a calculation of usage of all phases of the building.

## Quality of Life

(3)Increase City activity in purchasing Open Lands. Loveland has accumulated a significant balance in its Open Space Fund (approximately \$12 million balance shown in the 2012 Budget). More actively plan and purchase Open Lands with these funds. In addition, focus on open lands that will be open to the public, and take actions to open existing open lands areas to the public if appropriate.

(1)Adopt a City environmental sustainability plan in 2012. Focus the City's efforts as appropriate and adopt a sustainability plan. In 2008, staff began developing a draft plan to bring forward to Council for consideration on the topic of environmental sustainability; the Council has previously reviewed a draft sustainability plan in 2011 at a Study Session. The City is already doing many things but has not adopted a formal policy statement. The plan is built around already existing concepts in existing City plans, and then combines that with a strategy to identify the City's role in guiding and supporting sound environmental decision-making.

(4)Refocus efforts concerning poverty and homelessness. Due to reductions in Federal CDBG Funding and the recession, local agencies are struggling to provide services to our citizens in need. A major concern is the increase of children and youth in poverty. In 2011, the Council gave this priority and conducted a Study Session, as well as collaborating with the School District.

## Financial and Administrative

(5)Reduce City sales tax on food, or some food items. A philosophical and policy question is raised, whether it is appropriate and equitable to charge sales tax on food. The City currently operates a rebate program for sales tax paid on food by low-income residents, at a cost of roughly \$130,000 to \$150,000 annually. Sales tax paid on food sales in the community accounts for several million dollars annually; substantial reduction would create a significant budget deficit going forward that would need to be addressed.

(1)Complete the Five Year Update of the Capital Expansion Fee System. Every five years, the City updates the Capital Expansion Fee system to take into account the additions of capital improvements and shifts in the economic base of the community. The last update was completed in 2007. Capital expansion costs are recovered from new development, while annual operating taxes, fees, and charges are responsible for ongoing operating and maintenance expenses, as well as capital replacement (depreciation) costs and capital betterment costs resulting from service improvements. Only growth-related expenses are included in the CEF fees. The basic theory underlying the Capital Expansion Fee System is that growth should pay its fair share of the costs that it imposes on the City. The update will include extensive public outreach and multiple meetings with City Council, and city advisory commissions. The five-year update is expected to be completed by in-house staff without additional consulting costs.

(6)Developing Annual Budget Guidance. The Budget's assumptions, conditions and guiding principles are a critical point in the budget development process where the senior leadership of an organization has great influence. Council has occasionally been deeply involved in the initial assumptions, and in other years has left this primarily to staff.

## **Exhibit 4: Planning for 2012 City Council Advance**

### **City Council Planning Committee:**

Mayor Cecil Gutierrez, Council Member Klassen, Council Member Hugh McKean

### **Desired Results**

- Goals, Priorities, and Work Program for 2012

### **Logistics/Mechanics**

Saturday, January 21, 2012, 8 am to 5 pm

Loveland Museum and Gallery

Food: Catering to You by James - continental breakfast; noon sandwich bar; afternoon break

Facilitator Dallas Everhart, Everhart & Associates, LLC

### **Topics and Agenda**

Draft list created by and circulated to Council

List was reviewed/voted at the January 10 City Council study session

List was brought into Advance for final confirmation

### **Preliminary Agenda Outline for the Day**

Introductory matters/expectations

Preliminary review of major issues/confirmation of topics for discussion

In-depth discussions of the selected topics

Final goals and objectives

Study session topic identification

Governance/process issues to achieve goals

Summary/confirmation/wrap-up of results from the day

### **Follow-up**

Periodic reports on progress, to City Council

Mid-year study session or “mini-Advance” to review

**Exhibit 5: Classification of Topics at January 10 Study Session**

## Topics Listing for City Council Consideration

### Loveland City Council Advance, 2012

Mandatory or nearly so	Staff will do this anyway, based on previous direction	Long term; Council participation critical to the item	Discretionary
<b><i>Public Safety</i></b>			
Long-term Police staffing plan		Plan the Police Firing Range Northern CO Regional Crime Lab Plan Fire Station 2 and acquire property	Review speeding through School Zones
<b><i>Economic Vitality</i></b>			
Fill the "Black Boxes" Retail recruitment program		Market or develop the 25/402 Property Bring the Artspace project to construction  Expansion of the Loveland Museum Restore the Pulliam Building	Evaluate downtown infrastructure  Create a structure for downtown development
Carry out a signage program Market Loveland aggressively		Cooperative Agreement with Johnstown	Develop Hwy 287 business development plan Evaluate the future of the Downtown URA Evaluation of Centerra
<b>Staff will do this anyway,</b>		<b>Long term; Council participation</b>	

Mandatory or nearly so	based on previous direction	critical to the item	Discretionary
		Airport economic development planning 402 Corridor Plan and County IGA	Reconsider Loveland Jobs Development Fund Debrief econ dev efforts, successes and failures
<b><i>Infrastructure Quality</i></b>			
Future Water Conservation Planning Cross Connection-Backflow Program		Power infrastructure needs: short - long term Water infrastructure needs: short - long term	
		Accelerate undergrounding existing power lines Loveland leadership in regional transportation Highway 34 Traffic Improvements Highway 402 – State to City transition talks Transportation/streets funding gap More stable funding for street maintenance	
	Transportation Master Plan Update		Public Works Service Center Expansion
<b><i>Quality of Life</i></b>			
	Increase City purchases of Open Lands Complete the City's recreational trail	Adopt City environmental sustainability plan	Additions to recreational trail network  Refocus efforts for poverty Creation of a Library District
<b><i>Financial/Administrative</i></b>		Plan for use of TABOR Reserve	Reduce City sales tax on food Review Citywide special events
	Complete Five Year Update of CEFs Planning application fee increases	Develop annual Budget guidance	
	New performance measurement program Improve cost accounting		



**CITY OF LOVELAND**  
FINANCE DEPARTMENT

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(970) 962-2695 • FAX (970) 962-2900 • TDD (970) 962-2620

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**AGENDA ITEM:** 13  
**MEETING DATE:** 3/6/2012  
**TO:** City Council  
**FROM:** Bonnie Steele, Finance  
**PRESENTER:** Bonnie Steele, Acting Finance Director

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**TITLE:**  
January 2012 Financial Report

**RECOMMENDED CITY COUNCIL ACTION:**  
This is an information only item. No action is required.

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**DESCRIPTION:**  
The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves for the twelve months ending January 31, 2012.

**BUDGET IMPACT:**  
 Positive  
 Negative  
 Neutral or negligible

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**SUMMARY:**  
The Snapshot Report is submitted for Council review and includes the reporting of the City's revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves for the month ending January 31, 2012. Citywide Revenue (excluding internal transfers) of \$15,609,365 is 99.5% of year to date (YTD) budget or \$84,628 under the budget. Sales Tax collections are 102.3% of the YTD budget or \$84,419 over budget. Building Material Use Tax is 147.4% of YTD budget, or \$31,878 over budget. Sales and Use Tax collections combined were 104.6% of YTD budget or \$176,178 over budget. When the combined sales and use tax for the current year are compared to 2011 for the same period last year, they are higher by 6.3% or \$239,918.

Citywide total expenditures of \$8,387,020 (excluding internal transfers) are 64.9% of the YTD budget or \$4,533,349 under the budget, primarily due to the accrual of salaries back to 2011; timing of recording and lower than expected health, liability, and workers compensation claims; and the timing of the monthly payment to the Loveland Fire and Rescue Authority.

The City's health claims expenditure year-to-date is \$696,050 or 100.2% of budget. Compared to 2011 for the same period, claims paid in 2012 decreased by \$70,200 or 9.2%. The City's cash and reserve balance year-to-date was \$198,058,216.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

Snapshot report for January 2012



# SnapShot

Monthly Financial Report  
January 2012

## Financial Sustainability Strategies Can Be

### Found At:

[CityofLoveland.org](http://CityofLoveland.org)

- ⇒ Departments
- ⇒ Finance
- ⇒ Administration
- ⇒ Financial Reports
- ⇒ Financial Sustainability Strategies

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## A Snapshot In Time

- Citywide Revenue, excluding transfers between funds, \$15.6 million (0.5% below budget projections)
- Sales & Use Tax Collection, \$4 million (4.6% above budget projections)
- Citywide Expenditures, excluding transfers between funds, \$8.4 million (35.1% below budget projections)
- Citywide Year-To-Date Revenues exceed Year-To-Date Expenditures by \$7.2 million.
- General Fund Revenue, excluding transfers between funds, \$5.7 million (1.3% above budget projections)
- General Fund Expenditures, excluding transfers between funds, \$2.4 million, (51.4% below budget projections)
- General Fund Revenues exceed Expenditures by \$3.3 million.
- Health Claims, \$0.7 million (0.2% above budget projections)
- Cash & Reserves Year-To-Date Balance, \$198.1 million, \$141.3 million or 71.3% of these funds are restricted or reserved primarily for future capital projects.

### The Sales Tax Basics

	January 2012	Motor Vehicle Use		Building Materials Use		Combined Tax
		Sales Tax	Tax	Materials Use	Tax	
Budget 2012	\$ 3,648,890	\$ 207,261	\$ 99,108	\$ 3,955,259		
Actual 2012	\$ 3,733,309	\$ 130,337	\$ 55,542	\$ 3,919,188		
% of Budget	102.3%	62.9%	56.0%	99.1%		
Actual 2011	\$ 3,613,881	\$ 151,034	\$ 70,117	\$ 3,835,031		
Change from prior year		3.3%	-13.7%	-20.8%		2.2%

### Financial Sustainability

The City remains in a strong financial position because of a tradition of conservative fiscal management. To uphold this tradition, the City ensures that operations are paid for by current-year revenues, fund balances are positive and reserves are sufficient to overcome financial challenges, and debt is considered extraordinary and avoided in favor of a pay-as-we-go system. This sound fiscal policy allows the City to achieve Council goals and priorities and to meet challenges as they arise.

In 2011, the City embarked upon a community-wide financial sustainability effort to ensure that shortfalls projected in its General Fund 10-year financial plan were addressed using a balanced plan consisting of 81% expenditure cuts and 19% revenue increases. The Financial Sustainability Strategy, adopted by the City Council on June 7, 2011, includes both immediate actions reflected in the 2012 budget and ongoing processes designed to ensure that the City retains a healthy financial outlook.

# Citywide Revenues & Expenditures

January 2012

Combined Statement of Revenues and Expenditures						
January 2012						
REVENUE		Current Month	YTD Actual	YTD Revised Budget	% of Budget	
<b>General Governmental</b>						
1	General Fund	\$ 5,678,201	\$ 5,678,201	\$ 5,604,519	101.3%	
2	Special Revenue	45,050	45,050	38,906	115.8%	
3	Other Entities	787,102	787,102	759,390	103.6%	
4	Internal Service	1,434,628	1,434,628	1,398,602	102.6%	
5	<i>Subtotal General Govt Operations</i>	\$ 7,944,982	\$ 7,944,982	\$ 7,801,417	101.8%	
6	Capital Projects	743,305	743,305	610,813	121.7%	
<b>Enterprise Fund</b>						
7	Water & Power	5,866,967	5,866,967	6,231,660	94.1%	
8	Stormwater	350,467	350,467	368,963	95.0%	
9	Golf	243,689	243,689	207,400	117.5%	
10	Solid Waste	459,956	459,956	473,740	97.1%	
11	<i>Subtotal Enterprise</i>	\$ 6,921,079	\$ 6,921,079	\$ 7,281,763	95.0%	
12	<b>Total Revenue</b>	<b>\$ 15,609,365</b>	<b>\$ 15,609,365</b>	<b>\$ 15,693,993</b>	<b>99.5%</b>	
	<i>Prior Year External Revenue</i>		14,422,877			
	<i>Increase (-Decrease) From Prior Year</i>		5.4%			
13	Internal Transfers	223,078	223,078	988,350	22.6%	
14	<b>Grand Total Revenues</b>	<b>\$ 15,832,443</b>	<b>\$ 15,832,443</b>	<b>\$ 16,682,343</b>	<b>94.9%</b>	
<b>EXPENDITURES</b>						
<b>General Governmental</b>						
15	General Fund	\$ 2,395,261	\$ 2,395,261	\$ 5,019,179	47.7%	
16	Special Revenue	15,117	15,117	64,443	23.5%	
17	Other Entities	365,111	365,111	830,213	44.0%	
18	Internal Services	461,091	461,091	1,638,040	28.1%	
19	<i>Subtotal General Gov't Operations</i>	<i>\$ 3,236,580</i>	<i>\$ 3,236,580</i>	<i>\$ 7,551,876</i>	<i>42.9%</i>	
20	Capital	1,036,498	1,036,498	539,157	192.2%	
<b>Enterprise Fund</b>						
21	Water & Power	3,681,976	3,681,976	4,298,730	85.7%	
22	Stormwater	73,413	73,413	152,820	48.0%	
23	Golf	79,743	79,743	42,326	188.4%	
24	Solid Waste	278,810	278,810	335,460	83.1%	
25	<i>Subtotal Enterprise</i>	<i>\$ 4,113,942</i>	<i>\$ 4,113,942</i>	<i>\$ 4,829,336</i>	<i>85.2%</i>	
26	<b>Total Expenditures</b>	<b>\$ 8,387,020</b>	<b>\$ 8,387,020</b>	<b>\$ 12,920,369</b>	<b>64.9%</b>	
	<i>Prior Year External Expenditures</i>		10,431,310			
	<i>Increase (-Decrease) From Prior Year</i>		-19.6%			
27	Internal Transfers	223,078	223,078	988,346	22.6%	
28	<b>Grand Total Expenditures</b>	<b>\$ 8,610,098</b>	<b>\$ 8,610,098</b>	<b>\$ 13,908,715</b>	<b>61.9%</b>	
** Based on seasonality of receipts and expenditures since 1995.						

**Special Revenue Funds:** Community Development Block Grant, Cemetery, Local Improvement District, Lodging Tax, Affordable Housing, Seizure & Forfeitures.

**General Government Capital Projects Fund:** Capital Expansion Fee Funds, Park Improvement, Conservation Trust, Open Space, Art In Public Places.

**Other Entities Fund:** Special Improvement District #1, Airport, General Improvement District #1, Loveland Urban Renewal Authority, Loveland/Larimer Building Authority, Loveland Fire and Rescue Authority.

**Internal Service Funds:** Risk/Insurance, Fleet, Employee Benefits.

January 2012

Monthly Financial Report

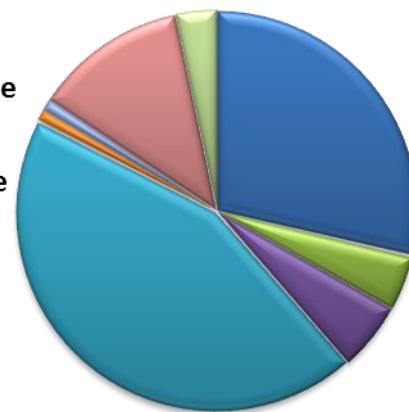
### YTD Operating Revenues of \$15.6 Million

- General Fund
- Special Revenue
- Capital Projects
- Other Entities
- Internal Service
- Utilities
- Stormwater
- Golf
- Solid Waste



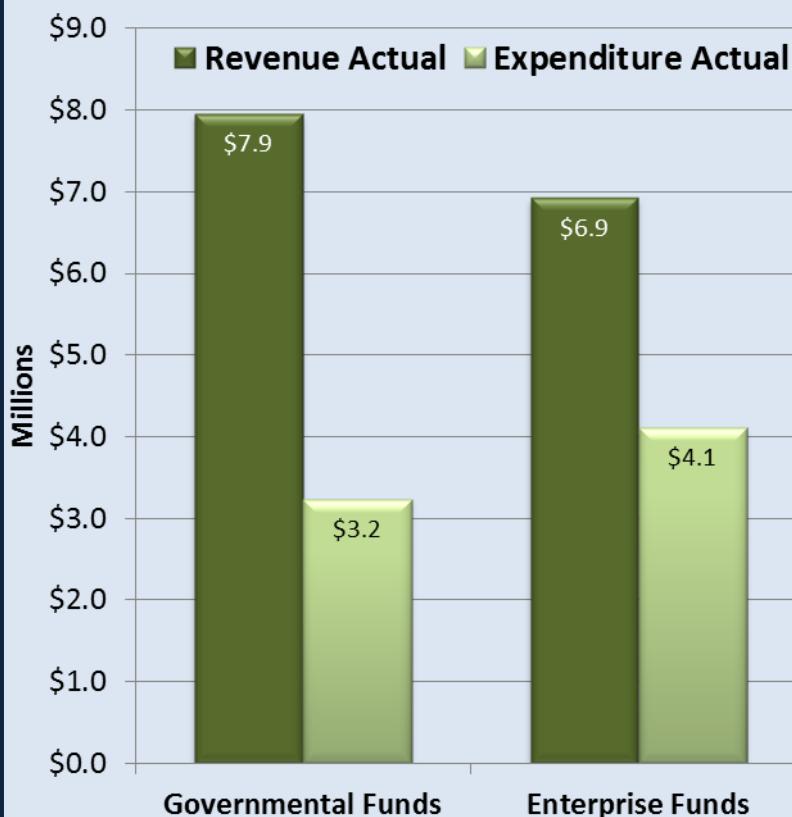
### YTD Operating Expenditures of \$8.4 Million

- General Fund
- Special Revenue
- Other Entities
- Internal Service
- Utilities
- Stormwater
- Golf
- Capital
- Solid Waste



- ⇒ Revenues exceed expenditures YTD by \$7,222,345 (line 14 less line 28)
- ⇒ Generally, actual revenue differs from budgeted amounts due to timing issues between planned and actual receipts (an example is Golf revenues (line 9), which are over budget due to January recognition of revenue from annual pass purchases in December)
- ⇒ Water & Power (line 7) are under budget due to decreased power demand in a warm January
- ⇒ Internal transfers (line 13 & 27) are under budget due to the timing of related expenditures
- ⇒ Generally, all funds are below budget, in part, due to the accrual of salaries to 2011 not reflected in the budget
- ⇒ The General Fund (line 15) is under budget due to timing of payments to the Fire Authority and Fort Collins for the Flex route and expenditure timing of human services grants
- ⇒ The Special Revenue funds (line 16) are below budget due to the timing of expenditures and grants from the Community Development Block Grant program
- ⇒ Other Entities funds (line 17) are under budget due to the timing of expenditures in the Fire Authority
- ⇒ Internal services (line 18) is under budget due to timing of recorded and lower than anticipated health claims, payments for workers compensation and general liability events
- ⇒ Capital expenditures (line 20) is over budget due to the timing of capital projects throughout the City

### By Comparison, Excluding Transfers

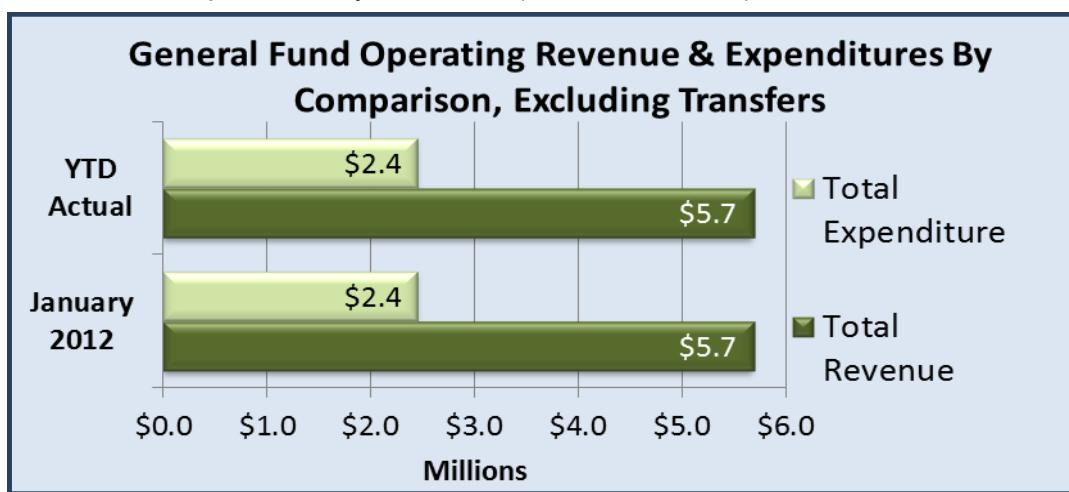


# General Fund Revenues & Expenditures

January 2012

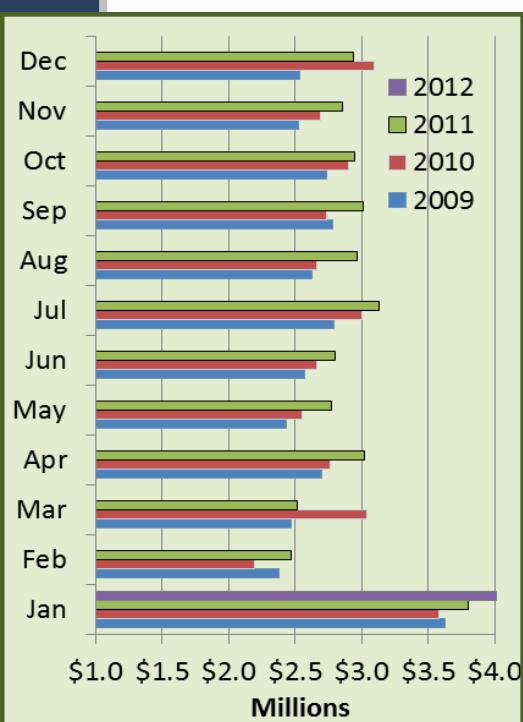
General Fund Revenue & Expenditures January 2012					
REVENUE	January 2012	YTD Actual	YTD Revised Budget	% of Budget	
<b>1 Taxes</b>					
2 Property Tax	\$ 709	\$ 709	-	-	
3 Sales Tax	3,733,309	3,733,309	3,648,890	102.3%	
4 Building Use Tax	99,108	99,108	67,230	147.4%	
5 Auto Use Tax	207,261	207,261	147,380	140.6%	
6 Other Taxes	221,529	221,529	128,600	172.3%	
7 Intergovernmental	309,113	309,113	627,716	49.2%	
<b>8 License &amp; Permits</b>					
9 Building Permits	104,583	104,583	66,110	158.2%	
10 Other Permits	35,303	35,303	24,085	146.6%	
11 Charges For Services	271,106	271,106	337,493	80.4%	
12 Fines & Forfeitures	99,569	99,569	83,773	118.9%	
13 Interest Income	59,763	59,763	33,800	176.8%	
14 Miscellaneous	536,773	536,773	439,442	122.1%	
<b>15 Subtotal</b>	<b>\$ 5,678,201</b>	<b>\$ 5,678,201</b>	<b>\$ 5,604,519</b>	<b>101.3%</b>	
16 Internal Transfers	115,628	115,628	340,370	34.0%	
<b>17 Total Revenue</b>	<b>\$ 5,793,829</b>	<b>\$ 5,793,829</b>	<b>\$ 5,944,889</b>	<b>97.5%</b>	
<b>EXPENDITURES</b>					
<b>Operating Expenditures</b>					
18 Legislative	\$ 7,494	\$ 7,494	\$ 16,127	46.5%	
19 Executive & Legal	108,046	108,046	177,837	60.8%	
20 Economic Development	82,148	82,148	56,518	145.3%	
21 Cultural Services	82,839	82,839	95,962	86.3%	
22 Development Services	83,278	83,278	206,652	40.3%	
23 Finance	151,859	151,859	309,332	49.1%	
25 Human Resources	28,152	28,152	73,364	38.4%	
26 Information Technology	327,989	327,989	602,551	54.4%	
27 Library	94,799	94,799	230,691	41.1%	
28 Parks & Recreation	243,061	243,061	447,380	54.3%	
29 Police	751,521	751,521	1,260,931	59.6%	
30 Public Works	478,264	478,264	930,430	51.4%	
31 Non-Departmental	4,576	4,576	622,905	0.7%	
<b>32 Subtotal Operating</b>	<b>\$ 2,444,026</b>	<b>\$ 2,444,026</b>	<b>\$ 5,030,679</b>	<b>48.6%</b>	
33 Internal Transfers	95,007	95,007	195,090	48.7%	
<b>34 Total Expenditures</b>	<b>\$ 2,539,033</b>	<b>\$ 2,539,033</b>	<b>\$ 5,225,769</b>	<b>48.6%</b>	

- ⇒ Sales Tax revenue is above budgeted levels by 2.3%
- ⇒ Generally, actual revenue differs from budgeted amounts due to timing issues between planned and actual receipts (an example is building use tax and permit revenues (lines 4 & 5), which are over budget due to the timing of planned renovation activity)
- ⇒ Other tax revenue (line 6) is over budget, in part, due to higher than projected audit revenue
- ⇒ Intergovernmental revenue (line 7) is below budget due to the timing of federal transit grant payments and state highway signal maintenance funds
- ⇒ Interest Income revenues (line 13) are higher than expected due to differences between budgeted and actual 2012 beginning fund balance and higher than expected returns
- ⇒ Miscellaneous revenues (line 14) are running above budget due to higher than expected sales tax application fees resulting from the implementation of a yearly renewal fee, approved by Council in 2011, and \$127,500 donation to the Rialto Theatre
- ⇒ Generally, all departments are below budget, at least in part, due to the accrual of salaries to 2011 not reflected in the budget and the timing of actual expenditures versus budgeted plans
- ⇒ Council expenditures (line 18) are under budget due to lower than planned travel and meeting costs
- ⇒ Economic Development (line 20) is over budget due to the timing of expenditures for the former Agilent property (budget appropriation was made from sales proceeds on February 7)
- ⇒ Development Services expenditures (line 22) are under budget due to the timing of human services grants
- ⇒ Finance (line 23) is under budget due to the timing of purchased services for external financial audits, outsourced revenue audits, and bank charges
- ⇒ Human Resources (line 25) is under budget due the timing of expenses for training and advertising
- ⇒ Information Technology (line 26) is under budget due to the timing of computer and service purchases
- ⇒ The Library (line 27) is under budget due to the timing of supplies expenses and an annual software maintenance contract
- ⇒ Public Works (line 30) is under budget due to the timing of payments to Fort Collins for FLEX service
- ⇒ Non-departmental expenditures (line 31) are below budget due to the timing of payments to the Loveland Fire & Rescue Authority
- ⇒ Internal transfers (line 33) are under budget due to the timing of related expenditures
- ⇒ Revenues exceed expenditures by \$3,254,796 (line 17 less line 34)



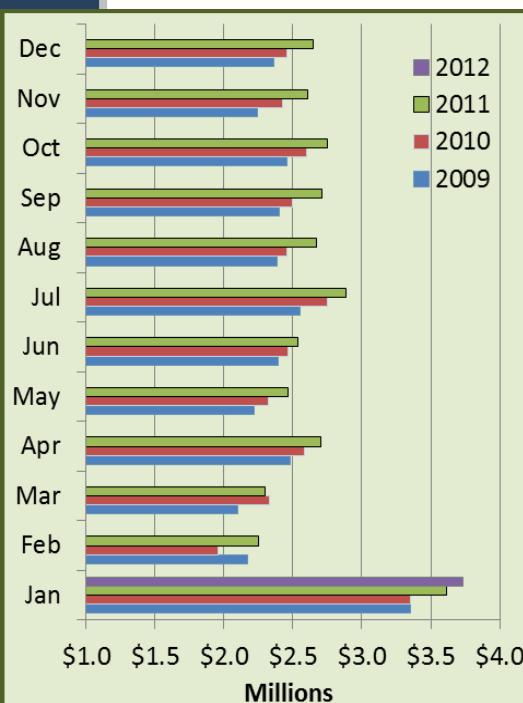
# Tax Totals & Comparisons

## Sales & Use Tax



	2009	2010	2011	2012	2012 Budget	+ / - Budget
Jan	\$3,622,251	\$3,573,972	\$3,799,760	\$4,039,678	\$3,863,500	4.6%
Feb	2,374,608	2,191,609	2,465,447		2,353,490	
Mar	2,468,095	3,041,068	2,517,162		2,834,880	
Apr	2,701,737	2,759,556	3,022,770		3,043,630	
May	2,428,860	2,550,227	2,769,526		2,777,110	
Jun	2,569,125	2,665,632	2,800,184		2,904,600	
Jul	2,794,222	3,004,324	3,129,254		3,254,770	
Aug	2,628,842	2,662,932	2,961,686		2,930,740	
Sep	2,782,768	2,732,087	3,008,637		2,992,510	
Oct	2,733,964	2,897,370	2,944,433		3,116,480	
Nov	2,522,092	2,690,549	2,853,507		2,881,350	
Dec	2,537,802	3,096,111	2,933,523		2,914,960	
YTD	\$32,164,365	\$33,865,435	\$35,205,889	\$4,039,678	\$35,868,020	-88.7%

## Retail Sales Tax

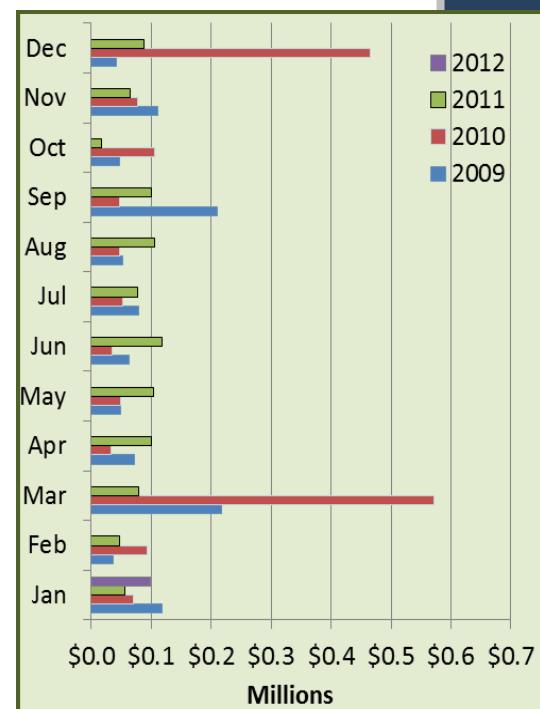


	2009	2010	2011	2012	2012 Budget	+ / - Budget
Jan	\$3,354,704	\$3,352,821	\$3,613,881	\$3,733,309	\$3,648,890	2.3%
Feb	2,170,562	1,959,729	2,249,749		2,132,780	
Mar	2,100,216	2,328,701	2,299,237		2,534,340	
Apr	2,482,752	2,579,918	2,702,024		2,807,740	
May	2,218,482	2,324,395	2,462,213		2,529,650	
Jun	2,390,535	2,468,207	2,536,541		2,686,160	
Jul	2,552,195	2,752,870	2,882,075		2,995,960	
Aug	2,383,119	2,458,382	2,667,674		2,675,470	
Sep	2,401,596	2,495,338	2,710,738		2,715,690	
Oct	2,457,158	2,602,599	2,746,866		2,832,420	
Nov	2,245,659	2,422,352	2,611,127		2,636,260	
Dec	2,358,273	2,455,821	2,647,014		2,672,660	
YTD	\$3,354,704	\$3,352,821	\$3,613,881	\$3,733,309	\$3,648,890	2.3%

# SnapShot

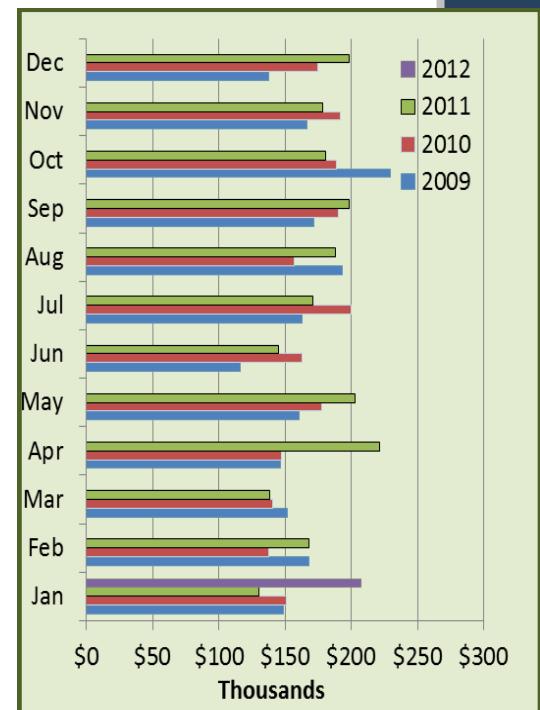
## Building Materials Use Tax

	2009	2010	2011	2012	2012 Budget	+ / - Budget
<b>Jan</b>	\$118,719	\$70,117	\$55,542	\$99,108	\$67,230	47.4%
<b>Feb</b>	36,254	93,928	47,621		64,310	
<b>Mar</b>	216,500	571,599	79,590		144,060	
<b>Apr</b>	72,251	32,260	99,569		82,360	
<b>May</b>	49,434	48,145	104,373		75,760	
<b>Jun</b>	62,723	34,349	118,318		66,460	
<b>Jul</b>	79,061	51,657	76,488		76,580	
<b>Aug</b>	52,578	47,716	105,871		70,510	
<b>Sep</b>	209,338	46,646	99,544		93,610	
<b>Oct</b>	47,437	105,818	17,021		80,030	
<b>Nov</b>	110,207	76,444	64,211		78,900	
<b>Dec</b>	41,844	465,626	88,033		100,190	
	\$1,096,346	\$1,644,305	\$956,181	\$99,108	\$1,000,000	
<b>YTD</b>	\$118,719	\$70,117	\$55,542	\$99,108	\$67,230	47.4%



## Motor Vehicle Use Tax

	2009	2010	2011	2012	2012 Budget	+ / - Budget
<b>Jan</b>	\$148,828	\$151,034	\$130,337	\$207,261	\$147,380	40.6%
<b>Feb</b>	167,793	137,951	168,077		156,400	
<b>Mar</b>	151,378	140,768	138,335		156,480	
<b>Apr</b>	146,734	147,378	221,177		153,530	
<b>May</b>	160,943	177,687	202,940		171,700	
<b>Jun</b>	115,867	163,076	145,325		151,980	
<b>Jul</b>	162,966	199,797	170,691		182,230	
<b>Aug</b>	193,144	156,834	188,141		184,760	
<b>Sep</b>	171,833	190,102	198,355		183,210	
<b>Oct</b>	229,369	188,953	180,546		204,030	
<b>Nov</b>	166,225	191,753	178,169		166,190	
<b>Dec</b>	137,685	174,664	198,476		142,110	
	\$1,952,766	\$2,019,997	\$2,120,569	\$207,261	\$2,000,000	
<b>YTD</b>	\$148,828	\$151,034	\$130,337	\$207,261	\$152,260	40.6%



# Sales Tax Collections

January 2012

## Collections By Standard Industrial Classification Code

Description	YTD 2011	YTD 2010	\$ Change	% Change	% of Total	Total %
Department Stores & General Merchandise	\$905,190	\$867,741	\$37,449	4.3%	24.2%	24.2%
Grocery Stores & Specialty Foods	455,958	437,404	18,553	4.2%	12.2%	36.5%
Restaurants & Bars	350,955	322,492	28,462	8.8%	9.4%	45.9%
Clothing & Clothing Accessories Stores	316,851	292,732	24,119	8.2%	8.5%	54.3%
Sporting Goods, Hobby, Book & Music Stores	234,005	219,692	14,314	6.5%	6.3%	60.6%
Utilities	179,651	164,858	14,793	9.0%	4.8%	65.4%
Motor Vehicle Dealers, Auto Parts & Leasing	178,430	169,799	8,631	5.1%	4.8%	70.2%
Building Material & Lawn & Garden Supplies	157,972	163,016	(5,045)	-3.1%	4.2%	74.4%
Used Merchandise Stores	156,450	117,860	38,590	32.7%	4.2%	78.6%
Broadcasting & Telecommunications	122,104	137,281	(15,177)	-11.1%	3.3%	81.9%
Electronics & Appliance Stores	98,004	133,041	(35,036)	-26.3%	2.6%	84.5%
Beer, Wine & Liquor Stores	79,044	76,859	2,185	2.8%	2.1%	86.6%
Health & Personal Care Stores	71,643	70,423	1,220	1.7%	1.9%	88.6%
Consumer Goods & Commercial Equip. Rental	61,480	60,991	490	0.8%	1.6%	90.2%
Electronic Shopping & Mail-Order Houses	58,109	54,060	4,050	7.5%	1.6%	91.8%
Furniture & Home Furnishing Stores	50,673	45,840	4,834	10.5%	1.4%	93.1%
Hotels, Motels & Other Accommodations	48,865	46,369	2,495	5.4%	1.3%	94.4%
Office Supplies, Stationery & Gift Stores	42,249	45,686	(3,437)	-7.5%	1.1%	95.6%
Gasoline Stations with Convenience Stores	19,475	19,158	318	1.7%	0.5%	96.1%
All Other Categories	146,201	168,579	(22,378)	-13.3%	3.9%	100.0%
<b>Total</b>	<b>\$3,733,309</b>	<b>\$3,613,881</b>	<b>\$119,428</b>	<b>3.3%</b>	<b>100.0%</b>	

⇒ 2012 sales tax revenue is continuing where it left off, coming in 3.3% above January 2011. Three areas have started 2012 with double-digit improvement. However, four have started the year below their 2011 level. The North East Loveland area starting 2012 with an 11.8% increase over last January's performance, due to the performance the hotels and new restaurants in the area. The Outlet Mall is still riding on new store openings with a 12.8% increase. The Downtown area is feeling the pain of several store closings during the latter part of 2011, and is 10.0% down from last January.

⇒ By business category, Used Merchandise Stores reported the highest percentage at 32.7% and the highest dollar increases over last January. Furniture and Home Furnishing Stores continue

Geographical Area		YTD 2012	YTD 2011	Change
North West Loveland		\$403,493	\$394,538	2.3%
South West Loveland		90,998	99,879	-8.9%
North East Loveland		214,670	191,978	11.8%
South East Loveland		819,596	768,758	6.6%
Orchards Shopping Center		263,956	250,039	5.6%
Columbine Shopping Center		57,831	50,719	14.0%
Downtown		99,473	110,490	-10.0%
Centerra		394,491	371,007	6.3%
Promenade Shops		345,153	371,535	-7.1%
Outlet Mall		167,326	148,377	12.8%
Thompson Valley Shopping Center		235,145	219,059	7.3%
The Ranch		51,626	55,440	-6.9%
Airport		22,519	26,677	-15.6%
All Other Areas		567,031	555,385	2.1%
<b>Total</b>		<b>\$3,733,309</b>	<b>\$3,613,881</b>	<b>3.3%</b>

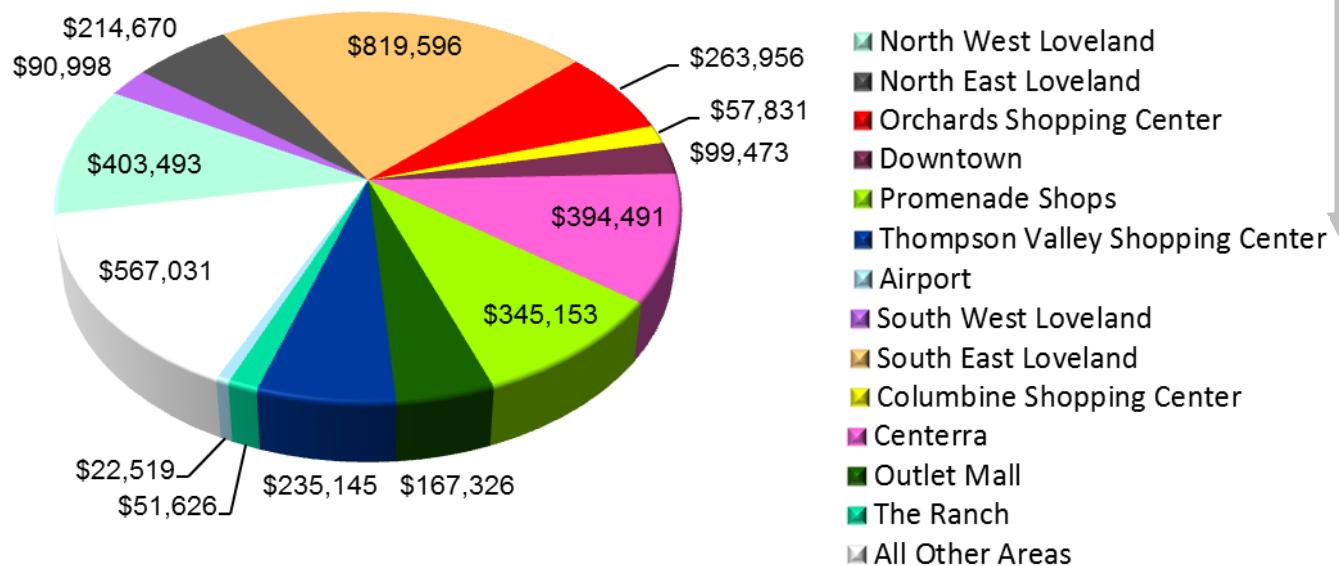
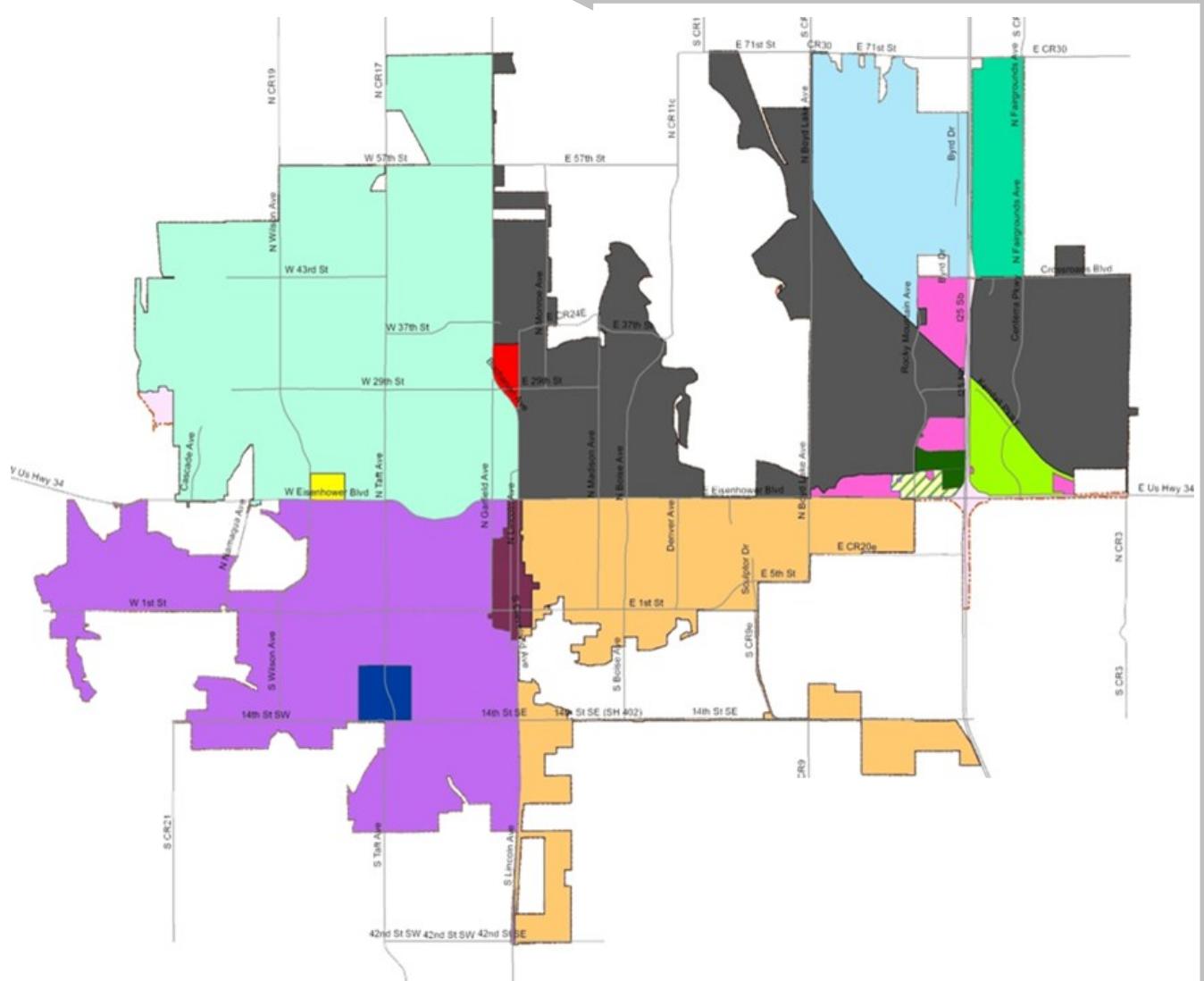
their upward trend with a 10.5% improvement for January. Clothing & Clothing Accessories and Restaurants & Bars have started 2012 with 8.2% and 8.8% improvements respectively.

Audit Revenue received in 2012 is \$32,764 and \$34,126 has been collected in Lodging Tax.

# Geographical Codes

# January 2012

## Monthly Financial Report



# Health Care Claims

January 2012

Cash Basis of Claims Paid						
	OAP	HRA	Total	Budget	\$ Over / (Under) Budget	% Over / (Under) Budget
<b>2012</b>	January \$ 608,693	\$ 87,357	\$ 696,050	\$ 694,333	\$ 1,717	0.2%
	YTD 608,693	87,357	696,050	694,333	1,717	0.2%
<b>2011</b>	January 658,318	107,932	766,250	630,046	136,204	21.6%
	YTD 658,318	107,932	766,250	630,046	136,204	21.6%
<b>Change</b>	January 113,017	51,399	164,341			
	% Jan 23.7%	54.4%	28.8%			
	YTD \$ (49,625)	\$ (20,575)	\$ (70,200)			
	% YTD -7.5%	-19.1%	-9.2%			

⇒ OAP—Open Access Plan

⇒ HRA—Health Reimbursement Arrangement

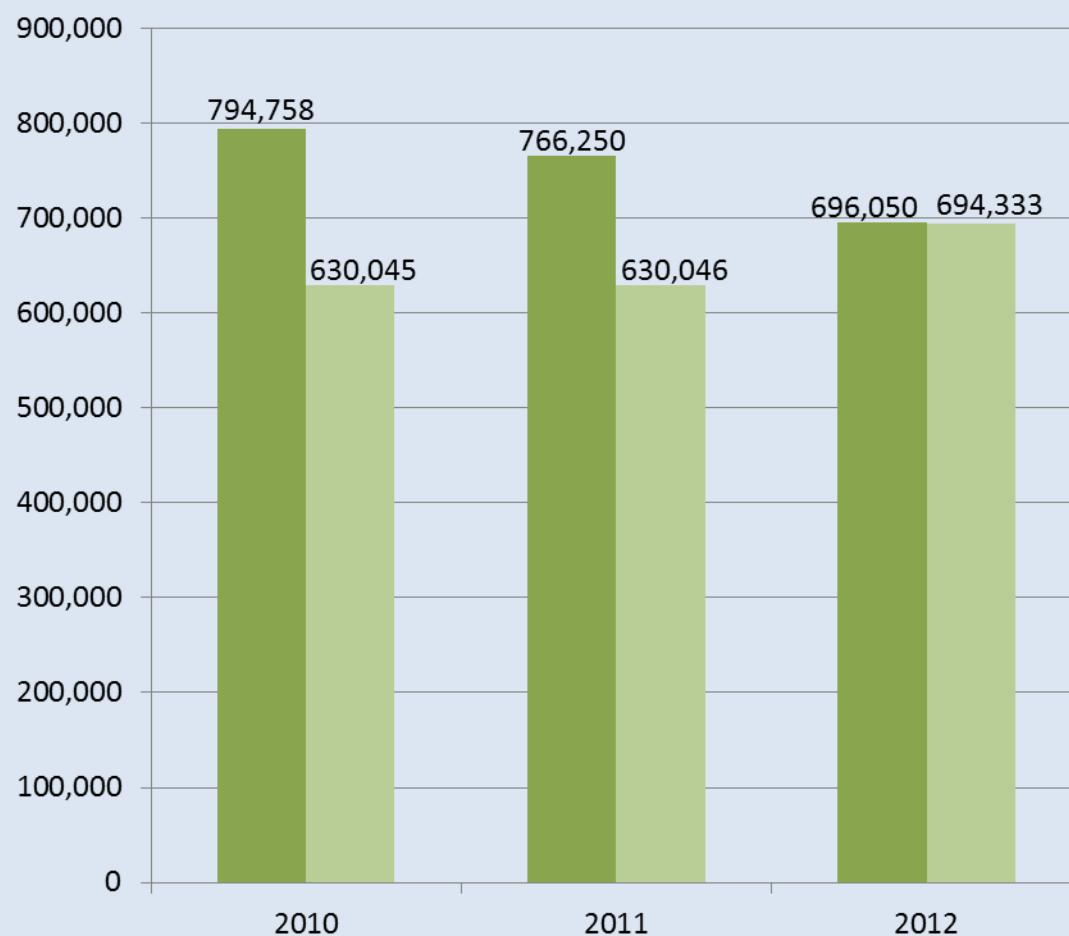
*This chart represents claims paid by Cigna in the current month, but due to the timing of when Accounting receives the information, the claims do not get recorded as an expenditure until the following month.*

## YTD Claims Over \$25k Comparison (2009-2012)

January	2009	2010	2011	2012
<b># of claims</b>	4	5	6	5
<b>Cost of claims</b>	\$ 239,336	\$ 780,057	\$ 230,053	\$ 233,341
<b># of stoploss claims:</b>				0

January 2012

Monthly Financial Report

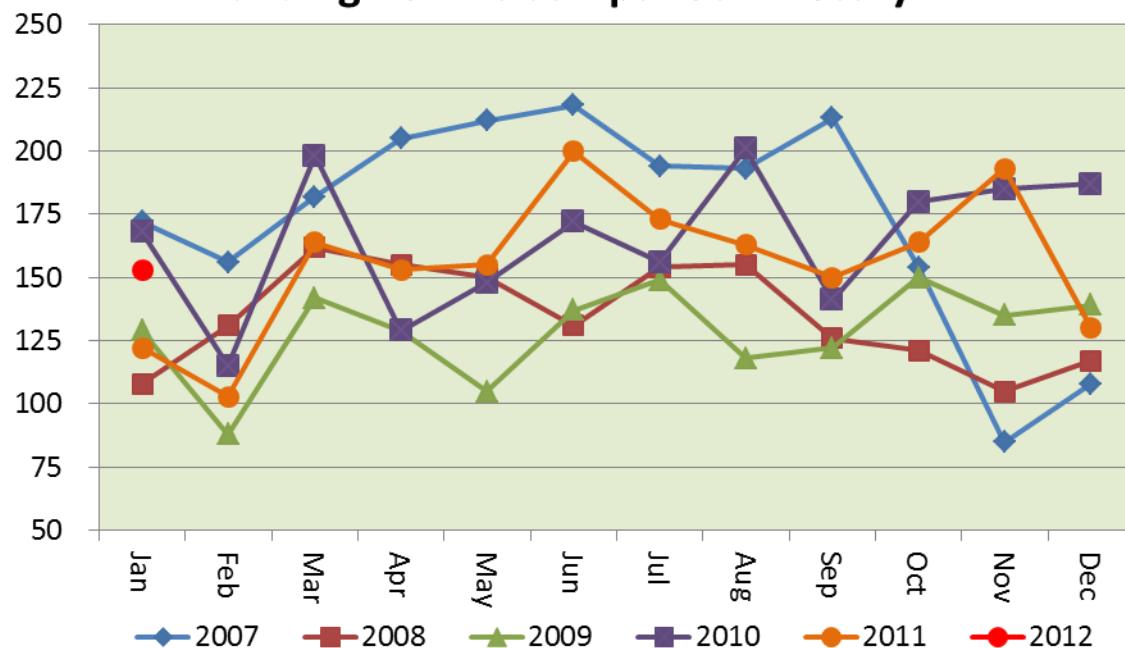
**YTD Incurred Claims vs. Budget****Claims Incurred****Budget**

# Activity Measures

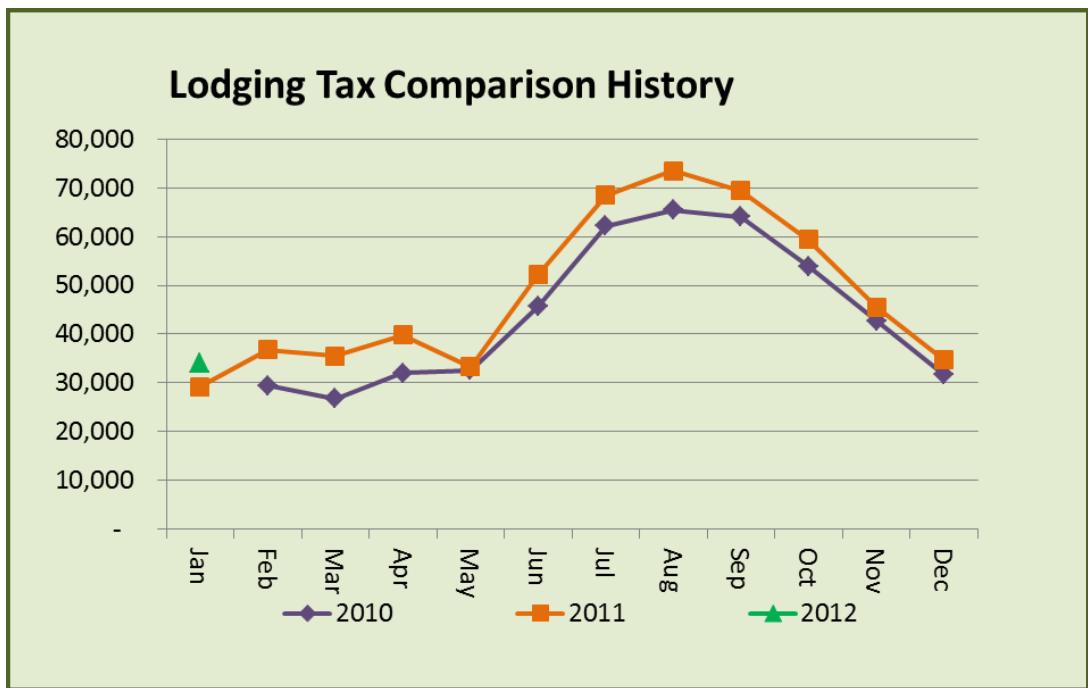
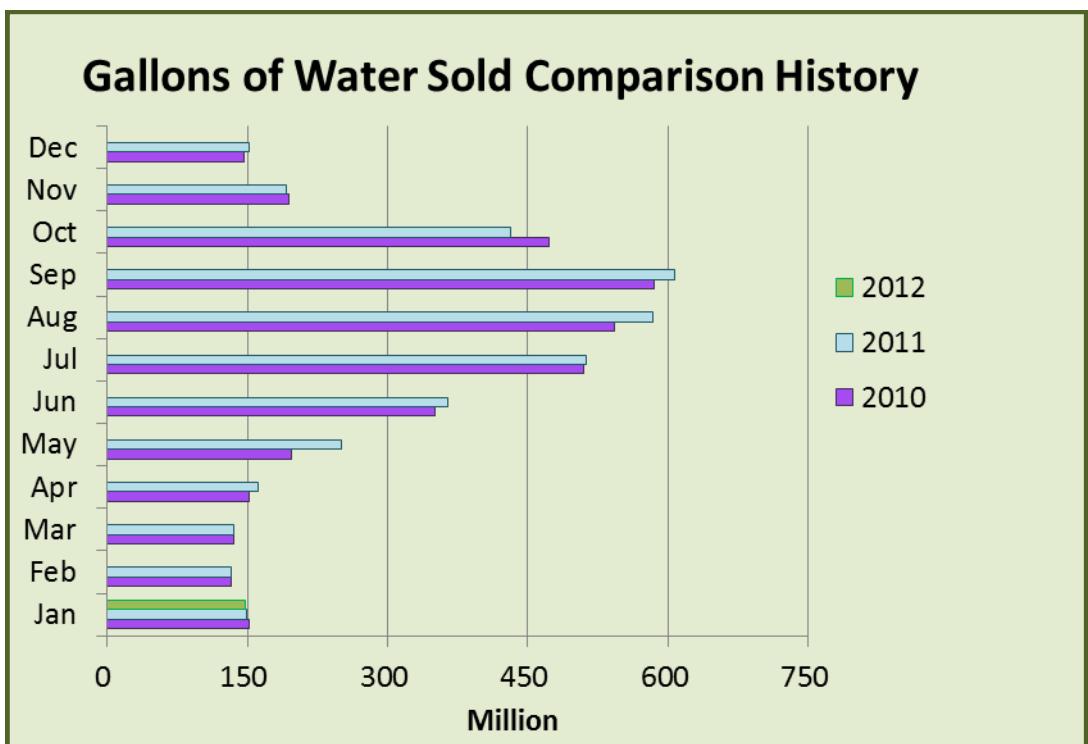
Measures	Jan '10	Jan '11	Jan '12	2010 YTD	2011 YTD	2012 YTD
# of Building Permits	168	122	153	168	122	153
Building Permit Valuations	\$3,609,745	\$4,578,658	\$7,634,814	\$3,609,745	\$4,578,658	\$7,634,814
# of Certified Occupancies	13	23	16	13	23	16
Net # of Sales Tax Licenses	(22)	(45)	(72)	(22)	(45)	(72)
New Residential Electric Meter Sets	6	74	5	6	74	5
# of Utility Bills Sent	34,955	35,438	35,981	34,955	35,438	35,981
Rounds of Golf	0	1,087	1,749	0	1,087	1,749
Health Claim Costs/Emp.	\$1,292	\$1,218	\$1,105	\$1,292	\$1,218	\$1,105
# of Vacant Positions	6	15	32	6	15	32
# of Frozen Vacant Positions	13	13	9	13	13	9
# of Eliminated Positions	38	42	46	38	42	46
KWH Demand (kH)	99,004	99,031	97,112	99,004	99,031	97,112
KWH Purchased (kwh)	59,973,986	61,434,059	61,259,661	59,973,986	61,434,059	61,259,661
Gallons of Water Sold	151,908,272	149,281,685	147,790,418	151,908,272	149,281,685	147,790,418
# of Workers' Comp Claims	12	13	11	12	13	11
\$ of Workers' Comp Claims Paid	\$ -	\$774	\$87,948	\$ -	\$774	\$87,948
# of Open Claims Current Year	4	10	3	4	10	3
# of Total Open Claims	14	18	13	14	18	13
\$ of Total Open Claims	\$171,072	\$118,450	\$168,332	\$171,072	\$118,450	\$168,332
# of Hotel Rooms	N/A	1,117	1,117	N/A	1,117	1,117
\$ of Lodging Tax Collected	N/A	\$ 29,157	\$34,126	N/A	\$29,157	\$34,126

January 2012

### Building Permit Comparison History



January 2012



Monthly Financial Report

# Cash & Reserves

January 2012

**Total Cash & Reserves** = \$198.1 million, of which \$141.2 million is restricted or reserved, or 71.3%, leaving \$56.8 million unrestricted.

Statement of Cash: January 2012				
	Beginning	YTD Activity	Ending	
<b>Restricted</b>				
1 Capital Expansion Fees	\$ 33,804,217	\$ 487,276	\$ 34,291,494	
2 Other Special Revenue Funds	22,093,232	138,587	22,231,820	
3 Capital Projects	2,838,543	(1,037,404)	1,801,139	
4 Water System Impact Fees	7,439,475	136,847	7,576,322	
5 Windy Gap	4,289,590	8,540	4,298,131	
6 Raw Water	18,335,520	42,775	18,378,294	
7 Wastewater System Impact Fees	4,506,916	21,386	4,528,302	
8 Storm Drainage System Impact Fees	1,460,122	14,570	1,474,692	
9 Power System Impact Fees	6,936,530	197,908	7,134,438	
10 Cemetery	2,531,442	8,647	2,540,089	
11 Other Entities	3,932,834	(317,092)	3,615,742	
<b>12 Total Restricted</b>	<b>\$ 108,168,422</b>	<b>\$ (297,960)</b>	<b>\$ 107,870,462</b>	
<b>Committed/Assigned Balance Amounts</b>				
13 General Fund				
14 Operating/Emergency	1,731,040	-	1,731,040	
15 Council Capital Reserve	3,490,565	(1,191,665)	2,298,900	
16 Liability	125,000	-	125,000	
17 Police Communication Console Replacement	616,000	-	616,000	
18 Library Reserve	161,278	321	161,599	
19 Library Building Reserve	16,750	-	16,750	
20 Telephone Switch Reserve	261,460	-	261,460	
21 Excess TABOR	4,457,548	-	4,457,548	
22 Water	650,785	(93,355)	557,430	
23 Wastewater	789,050	3,390	792,440	
24 Storm Water	312,821	(21,359)	292,462	
25 Power	3,032,221	53,838	3,086,059	
26 Golf	248,245	494	248,739	
27 Insurance Reserves	5,008,647	69,203	5,077,851	
28 Employee Benefits	6,260,863	637,469	6,898,333	
29 Fleet Replacement	6,701,071	100,063	6,801,134	
<b>30 Total Committed/Assigned</b>	<b>\$ 33,863,345</b>	<b>\$ (441,600)</b>	<b>\$ 33,421,744</b>	
<b>31 Total Restricted/Committed/Assigned</b>	<b>\$ 142,031,767</b>	<b>\$ (739,560)</b>	<b>\$ 141,292,206</b>	
<b>Unassigned Balance Amounts</b>				
32 General	18,063,801	1,960,962	20,021,763	
33 Airport	897,343	(156,653)	740,691	
34 Internal Service - Vehicle Maintenance	140,369	191,291	331,659	
35 Golf	1,526,727	(44,993)	1,481,734	
36 Water	3,687,783	(529,012)	3,158,771	
37 Wastewater	7,101,451	30,507	7,131,958	
38 Power	17,182,585	305,082	17,487,668	
39 Stormwater	1,772,655	(121,035)	1,651,619	
40 Solid Waste	4,708,104	49,041	4,757,145	
<b>41 Total Unassigned</b>	<b>\$ 55,080,819</b>	<b>\$ 1,685,190</b>	<b>\$ 56,766,009</b>	
<b>42 Total Cash</b>	<b>\$ 197,112,586</b>	<b>\$ 945,630</b>	<b>\$ 198,058,216</b>	

Line Detail on Page 15 —>

## Statement of Cash Line Detail

### (Line 15) Council Capital Reserve

- ⇒ 1,100,000 Downtown infrastructure improvements
- ⇒ 91,665 Interfund loan payment

**(Line 19)** The market value of the Proctor & Gamble Stock as of December 31, 2011 is \$211,776. This value represents the original value of the stock when it was first donated.

## Capital Projects \$500,000+

Project Title	2012 Budget	2012 Expenditures	Remaining 2012 Budget	% of 2012 Budget (Exp/Bud)
<b>Water Capital</b>				
Morning Drive Alternate 30" Line - Phase 1	\$ 1,486,050	\$	- \$ 1,486,050	0.00%
Filter Plant 2 Underdrain and Air Scour Improvement	\$ 670,240	\$	- \$ 670,240	0.00%
<b>Raw Water Capital</b>				
Windy Gap Firming Project	\$ 608,570	\$	- \$ 608,570	0.00%
<b>Power Capital</b>				
East Sub to Crossroads Sub on Railrod	\$ 1,894,640	\$	- \$ 1,894,640	0.00%
Horseshoe Sub along Hwy 287 to 29th St.	\$ 733,910	\$	- \$ 733,910	0.00%
<b>Stormwater Capital</b>				
Washington Ave Outfall Phase 4	\$ 750,000	\$ 2,298	\$ 747,702	0.31%
McHaffey Park Regional Detention Pond	\$ 500,000	\$	- \$ 500,000	0.00%
<b>Streets Transportation Program</b>				
2012 Street Rehabilitation	\$ 3,644,900	\$ 87	\$ 3,644,313	0.02%
<b>All Other</b>				
Fire Station 6 Remodel and Expansion	\$ 767,350		\$ 767,350	0.00%
McHaffey Park Development	\$ 8,550,000	\$ 100	\$ 8,549,900	0.00%
Open Lands Acquisition	\$ 2,850,000		\$ 2,850,000	0.00%
Downtown Infrastructure	\$ 1,100,000		\$ 1,100,000	0.00%

# January 2012 SnapShot

## Monthly Financial Report

**City Of Loveland  
500 East 3rd Street  
Loveland, CO 80537**

**For more information regarding this report contact:**

Bonnie Steele, Acting Finance Director

970.962.2313 or [steelb@ci.loveland.co.us](mailto:steelb@ci.loveland.co.us)





**CITY OF LOVELAND**  
CITY MANAGER'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

**AGENDA ITEM:** 14  
**MEETING DATE:** 3/6/2012  
**TO:** City Council  
**FROM:** Alan Krcmarik, Executive Fiscal Advisor  
**PRESENTER:** Alan Krcmarik

**TITLE:** Investment Report for January 2012

**RECOMMENDED CITY COUNCIL ACTION:** This is an information only item. No Council action is required.

**DESCRIPTION:** The budget estimate for investment earnings for 2012 is \$ 2,729,560. For January 2012, the amount posted to the investment account is \$393,527 including realized gains. Actual year-to-date earnings are *higher* than the year-to-date projection by \$163,527. Based on January's monthly statement, the estimated annualized yield on the U.S. agencies and corporates was 1.56%, under the annual target rate of 1.7% for 2012. Reinvestment rates have trended downward significantly over the last eight months.

**BUDGET IMPACT:**

- Positive
- Negative
- Neutral or negligible

The overall budget impact of this monthly report is positive because the monthly budget for investment earnings has been exceeded by over \$163,000.

**SUMMARY:** At the end of January, the City's total portfolio had an estimated market value of \$199.0 million, about \$800,000 more than a month ago. Of this amount, USBank held (including accrued interest) \$179.6 million in trust accounts; other funds are held in local government investment pools, in operating accounts at WellsFargo Bank, and a few miscellaneous accounts. Interest rates have trended significantly lower over recent months and are projected to remain low for years. Investments are in US Treasury Notes, highly-rated US Agency Bonds, highly-rated corporate bonds, money market accounts, and local government investment pools. The City's investment strategy emphasizes safety of principal, then sufficient liquidity to meet cash needs, and finally, return on investment. Each percent of earnings on the portfolio equates to \$1.99 million annually.

**REVIEWED BY CITY MANAGER:**

**LIST OF ATTACHMENTS:** Investment Focus January 2012



# Investment Focus

## Monthly Investment Report

January 2012

### What's in here?

<b>Focal Points</b>	<b>1</b>
<b>Gain / Loss</b>	
<b>Rate Trends</b>	<b>2</b>
<b>Cash Statement</b>	<b>3</b>
<b>Portfolio size</b>	<b>4</b>
<b>Investment types</b>	
<b>Transactions / Maturity</b>	<b>5</b>
<b>Future Scan</b>	<b>6</b>

### Focal Points

- \* **New 2012 targets for the City's portfolio: 1) the interest rate target is 1.7%; 2) the earnings goal = \$2,729,560.**
- \* **City investments are in high quality, low risk securities, in compliance with state law and the adopted investment policy.**
- \* **Revenue posted to accounts = \$393,527 or 71% over target. This includes realized gains on security sales of \$7,500.**
- \* **Each 1% of the total portfolio amounts to about \$1.99 million.**
- \* **The month end market value shows the unrealized loss decreased slightly and was \$316,858 at the end of January.**

### Economic Report Charts the Economy

The Council of Economic Advisors released a massive 447-page report last week outlining proposals to improve the economy. The new chairman, Alan Kruger, is data driven. The report is full of data, charts, and graphs to depict virtually all aspects of the economy. On page 2 there are two charts covering the housing bust and the slow growth in income levels.

(Source: Morgan House on *The Motley Fool* website, February 22, 2012)

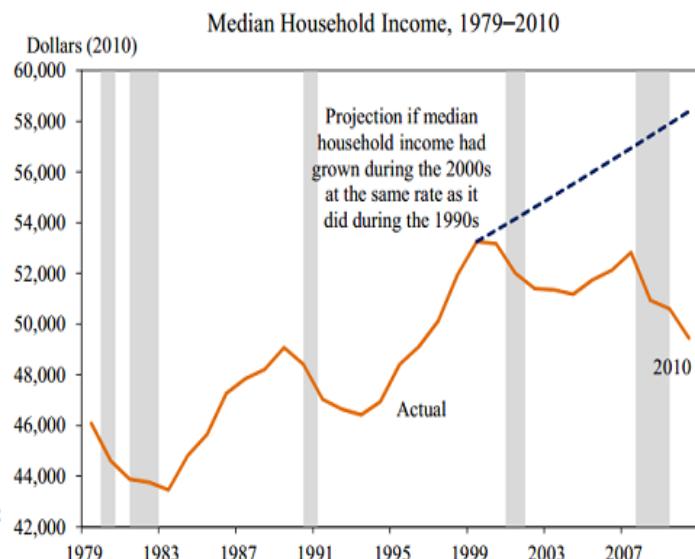
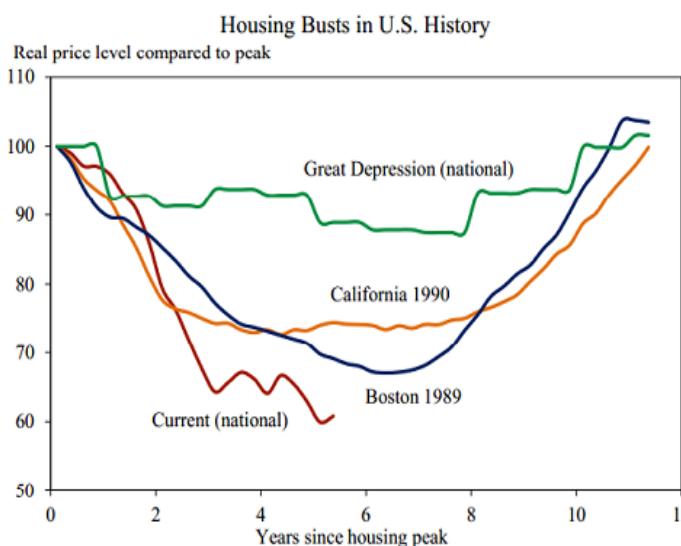
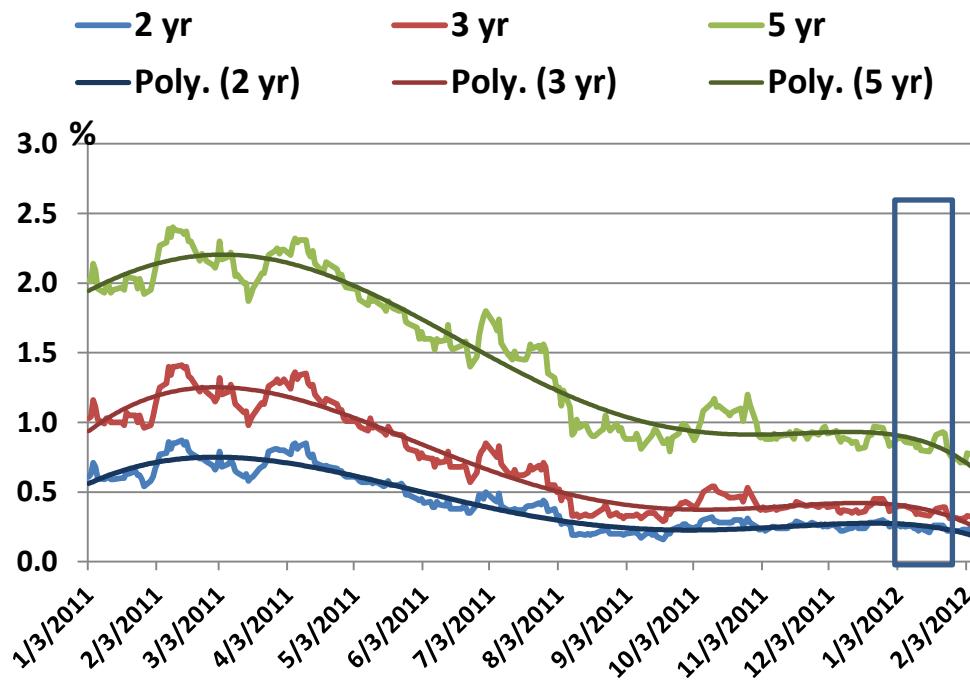
Type of Investment	Purchase Price	Market Value	Unrealized Gain or Loss
Checking Accounts	\$ 8,034,224	\$ 8,034,224	--
Investment Pools	11,592,946	11,592,946	--
Money Markets	<u>35,252,855</u>	<u>35,252,855</u>	--
Subtotal	\$ 54,880,025	\$ 54,880,022	--
Notes and Bonds	<u>144,414,135</u>	<u>144,097,277</u>	<u>\$ (316,858)</u>
<b>Total Portfolio</b>	<b>\$ 199,294,160</b>	<b>\$ 198,977,302</b>	<b>\$ (316,858)</b>
Data Sources	(Morgan Stanley)	(US Bank)	



# Monthly Investment Report

P . 200

## Treasury rate trends / Housing & Health Costs



These figures are in real (inflation-adjusted) terms, so there is some skewing. Housing prices fell hard during the Great Depression, but so did everything else -- wages, commodities, etc. What's been unprecedented about our recent crash is that home prices collapsed while the prices of almost everything else either rose or recovered quickly. The aggregate consumer price index is up about 10% since 2007, yet the S&P Case-Shiller housing index is still down more than 30% from its peak.

Rising health insurance costs explain some of why income growth was so poor last decade. Total compensation growth over the last decade was actually decent, but almost all of it came in the form of employers paying for higher health-insurance premiums. In 1990, employer-provided health insurance made up less than 6% of workers' compensation. By 2000, it was about the same, at 5.9%. Today, it's 8.4% and growing virtually every month.

## Cash Position Summary

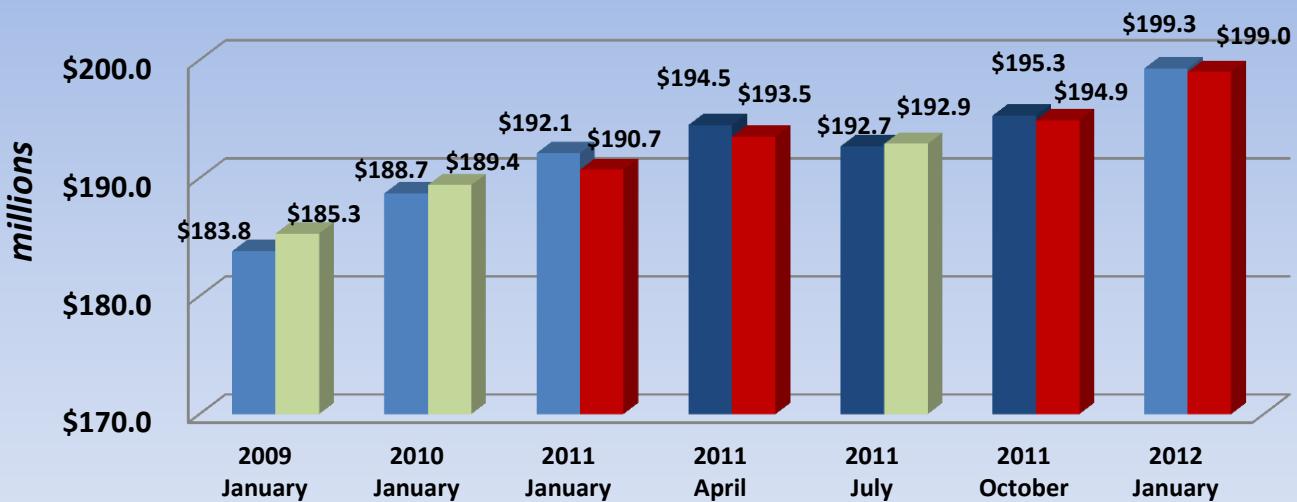
## Cash &amp; Reserves (unaudited)

		2012 Beginning	YTD Activity	2011 Ending
<b>Restricted Reserves</b>		Due to rounding, column and row totals may not add exactly.		
1	Capital Expansion Fees	\$ 33,804,217	\$ 487,276	\$ 34,291,494
2	Water System Impact Fees	7,439,475	136,847	7,576,322
3	Raw Water Revenue – Windy Gap	22,625,110	51,315	22,676,425
4	Wastewater System Imp. Fees	4,506,916	21,386	4,528,302
5	Storm Drain System Imp. Fees	1,460,122	14,570	1,474,692
6	Power Plant Investment Fees	6,936,530	197,908	7,134,438
7	Cemetery Perpetual Care	2,838,543	(1,037,404)	1,801,139
8	Other Restricted	28,557,508	(169,858)	28,387,650
9	<b>Total Restricted</b>	<b>\$ 110,168,422</b>	<b>\$ (297,960)</b>	<b>\$ 107,870,462</b>
<b>Reserve Balance Amounts</b>				
10	General Fund	\$ 10,859,640	\$ (1,191,344)	\$ 9,668,296
11	Enterprise Funds	5,033,122	(56,992)	4,976,130
12	Internal Service Funds	17,970,582	806,736	18,777,318
13	<b>Total Reserves</b>	<b>\$ 33,863,345</b>	<b>\$ (441,600)</b>	<b>\$ 33,421,744</b>
14	<b>Total Restricted and Reserved</b>	<b>\$ 142,031,767</b>	<b>\$ (739,560)</b>	<b>\$ 141,292,206</b>
<b>Unrestricted</b>				
15	General Fund	\$ 18,063,801	\$ 1,960,962	\$ 20,024,763
16	Airport	897,343	(156,653)	740,691
17	Internal Service – Vehicle Maint	140,369	191,291	331,659
18	Enterprise Funds	35,979,306	(310,410)	35,668,896
19	<b>Total Unrestricted</b>	<b>\$ 55,080,819</b>	<b>\$ 1,685,190</b>	<b>\$ 56,766,009</b>
20	<b>TOTAL CASH</b>	<b>\$ 197,112,586</b>	<b>\$ 945,630</b>	<b>\$ 198,058,216</b>

# Monthly Investment Report

## Portfolio Size / Types of Investments

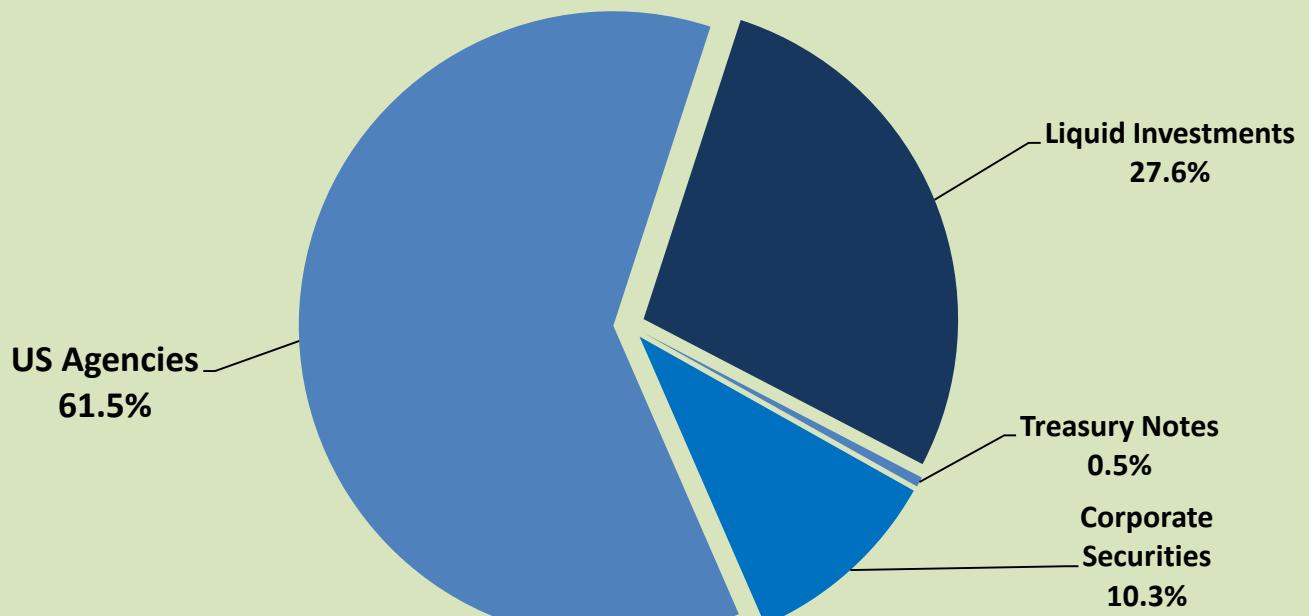
### Portfolio Size since January 2009



Blue bars show Purchase value, red and green bars show market value, red = loss and green = gain

### Portfolio by Type of Investment

January 2012 – Purchase Value of \$199.3 million



# Transactions / Portfolio by Maturity

	Maturity Date	Face Value	Purchase \$	Stated Rate
<b>Purchases</b>				
Fed. Home Loan Mort. Corp.	01/18/2012	\$ 5,000,000 \$ 5,000,000	\$ 5,000,000.00 \$ 5,000,000.00	1.500%
<b>Matured</b>				
None this month				
<b>Called</b>				
Federal Farm Credit Bank	11/18/2015	\$ 5,000,000	\$ 5,000,000.00	1.370%
Federal Home Loan Bank	10/27/2016	5,000,000	5,000,000.00	1.000%
Fed. Home Loan Mort. Corp	07/18/2016	5,000,000	5,000,000.00	0.750%
Fed. Home Loan Mort. Corp	07/18/2016	10,000,000	10,000,000.00	2.125%
Fed. Home Loan Mort. Corp	07/18/2016	5,000,000 *	5,000,000.00	2.125%
		\$ 30,000,000	\$ 30,000,000.00	
			* Gain of \$7,500.00	
<b>Sales</b>				
None this month				

**Portfolio by Maturity Term**  
(in millions - Total = \$199.3 at the end of January 2012)



The target rate for 2012 was 1.7%. In recent months, rates have fallen to record lows. For January, the portfolio earnings are well above the earnings target level for 2012.

To support earnings or to reposition the portfolio, bonds may be sold. Gains on sales total \$7,500 to date.

The blue bars show the stated term. Red bars show the calls. More of the five year bonds will be called early.



## Future Scan: Fed to hold rates – Recession less of a threat?

- ❖ The next meeting of the Fed is March 13. On January 25<sup>th</sup>, the **Federal Open Market Committee** (“FOMC” or “Fed” or “Committee”) surprised the markets with two pronouncements at the last meeting. They expect to keep short-term interest rates near zero for almost **three more years**. The Fed also puts a “Bull’s Eye on a Benchmark” by setting an **official target for inflation at 2.0%**. A bond-buying program – meant to push down long-term interest rates – could be the next step. Markets reacted with lower short-term interest rates. There seems to be growing dissent among the members of the Committee.
- ❖ The January 2012 Colorado Employment Situation will not be released until Tuesday, March 13, 2012. **Loveland’s residential employment level contracted** in December with 177 fewer jobs when compared to November. Compared to the revised estimate for December 2010, there are 1,362 more jobs for city residents. Using non-seasonally adjusted employment data for December, the national unemployment rate was 8.8%, the State of Colorado was 7.9%, Larimer County was 6.3%, Fort Collins was 7.2%, and Loveland was 5.4%. Of the Colorado cities, only Lafayette and Parker were lower at 4.7% and 4.3% respectively. Aurora (Adams County portion) had the highest unemployment rate for a city at 15.6%
- ❖ **Recession outlook.** The 49 economists who participated in the latest **Wall Street Journal** survey put the odds of a recession in the next year at just 16%, down from a 33% chance as recently as September. They now expect U.S. employers to add more than two million jobs over the next 12 months, a pace of growth that hasn’t been seen since 2006. And they think the economy is more likely to beat their expectations than fall short. (Source: **WSJ**, February 13, 2012) *The Economic Cycle Research Institute remains adamant: a U.S. Recession is coming in 2012; based on coincident indicators, probably around August.*
- ❖ Our investment advisors, **Morgan Stanley Smith Barney**, say that US economic data, specifically the employment numbers, have come in better than expected to begin 2012.
  - MSSB still sees policy related issues in the Euro Zone and the US dominating the headlines in the months to come.
  - Despite the aforementioned improvement in the labor markets, the Fed appears to be setting the stage for Quantitative Easing 3 this spring. We feel the FOMC is still going to be headed toward another asset purchase plan.
  - The US Treasury market should remain volatile, and we continue to hold to our broader US Treasury 10-yr yield range of 1.70% to 2.40%. The 5-year will be 0.75% to 1.20%.
 (Source: **Basis Points Fixed Income Strategy**, Kevin Flanagan, John Mackay, Collin J. Martin, February 8, 2012.)

For more information regarding this report, please contact:

**Alan Krcmarik, Executive Fiscal Advisor**  
**970.962.2625 or krcmga@ci.loveland.co.us**

Monthly Investment Report

January 2012

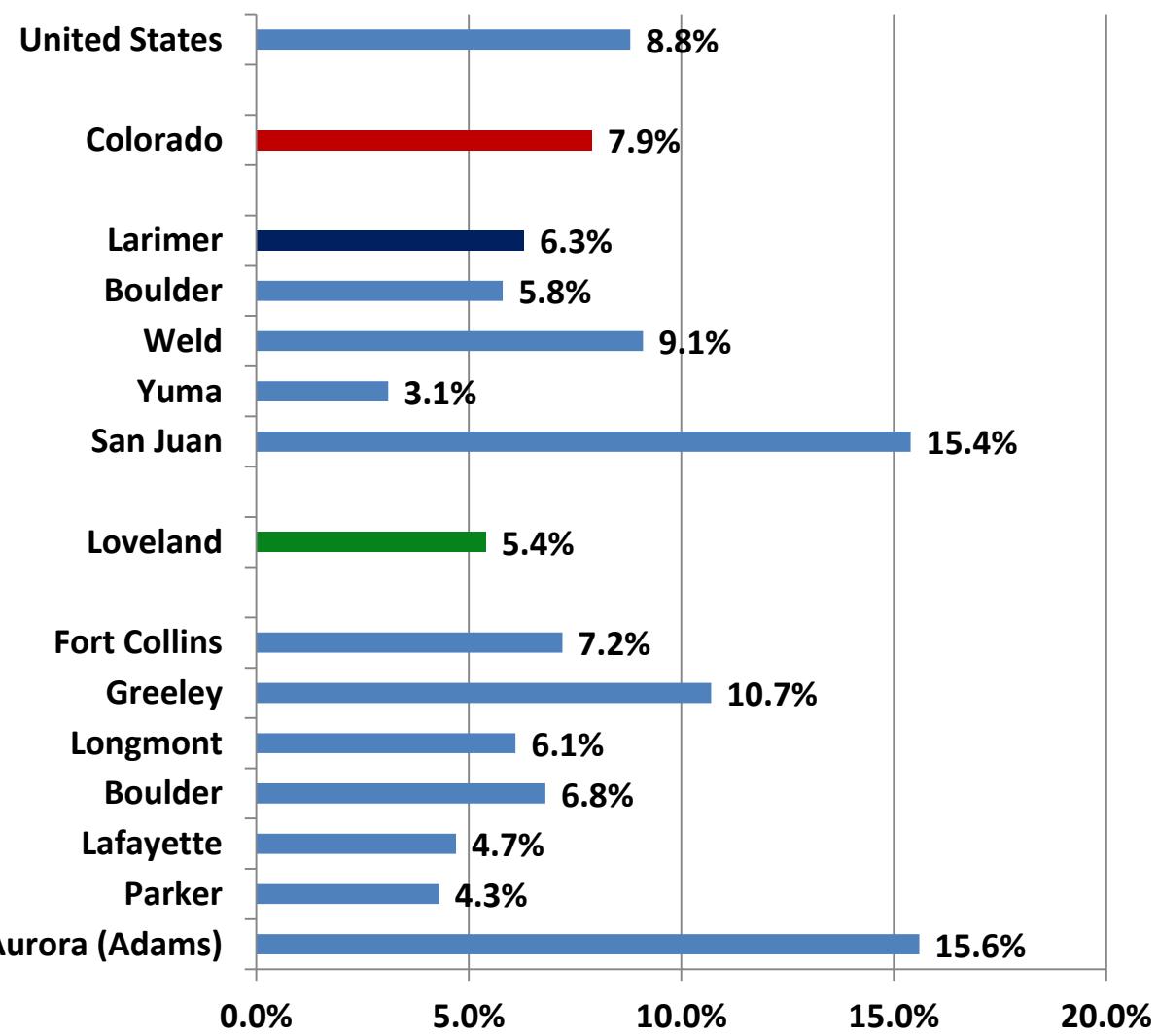


## *Updated for Colorado Labor data for December*

- ❖ Loveland residents reported **177 fewer** jobs in December 2011 when compared to November of 2011.
- ❖ Compared to one year ago in December, residents reported 1,362 **more** jobs.

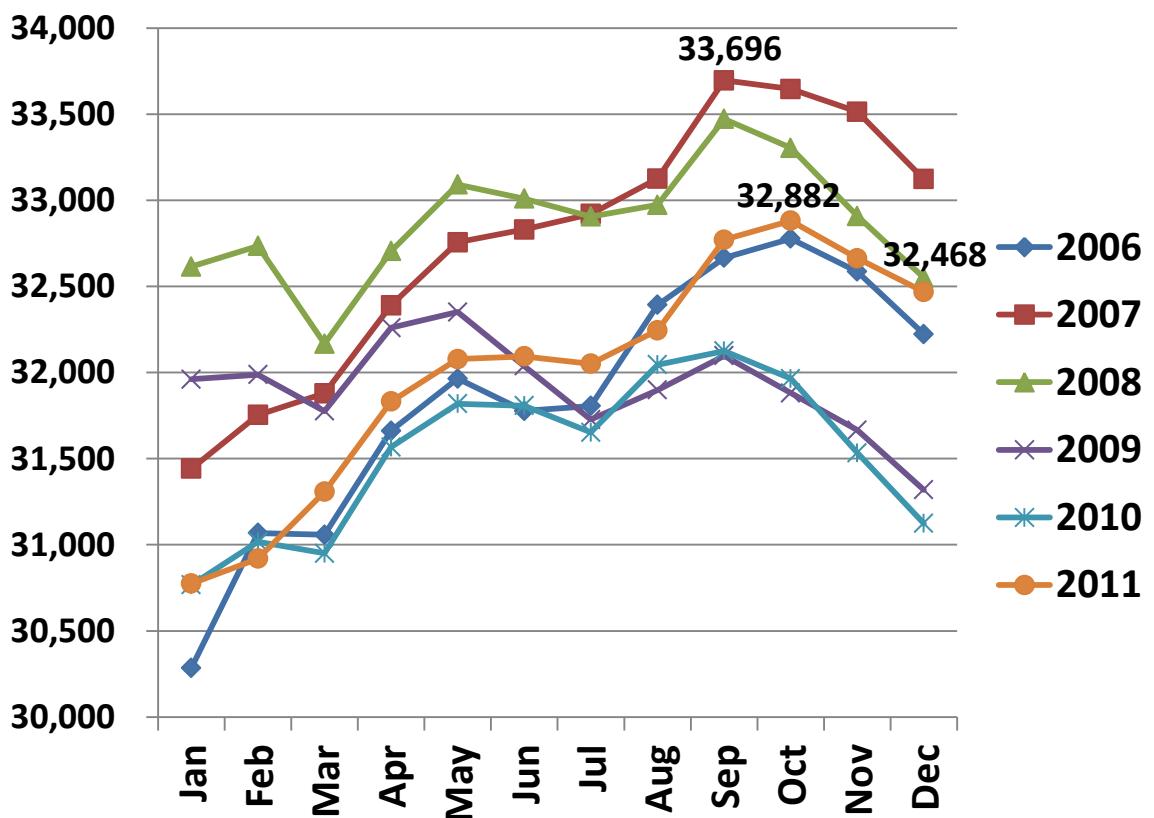
### **December Unemployment Rates**

*Data not adjusted for seasonality*



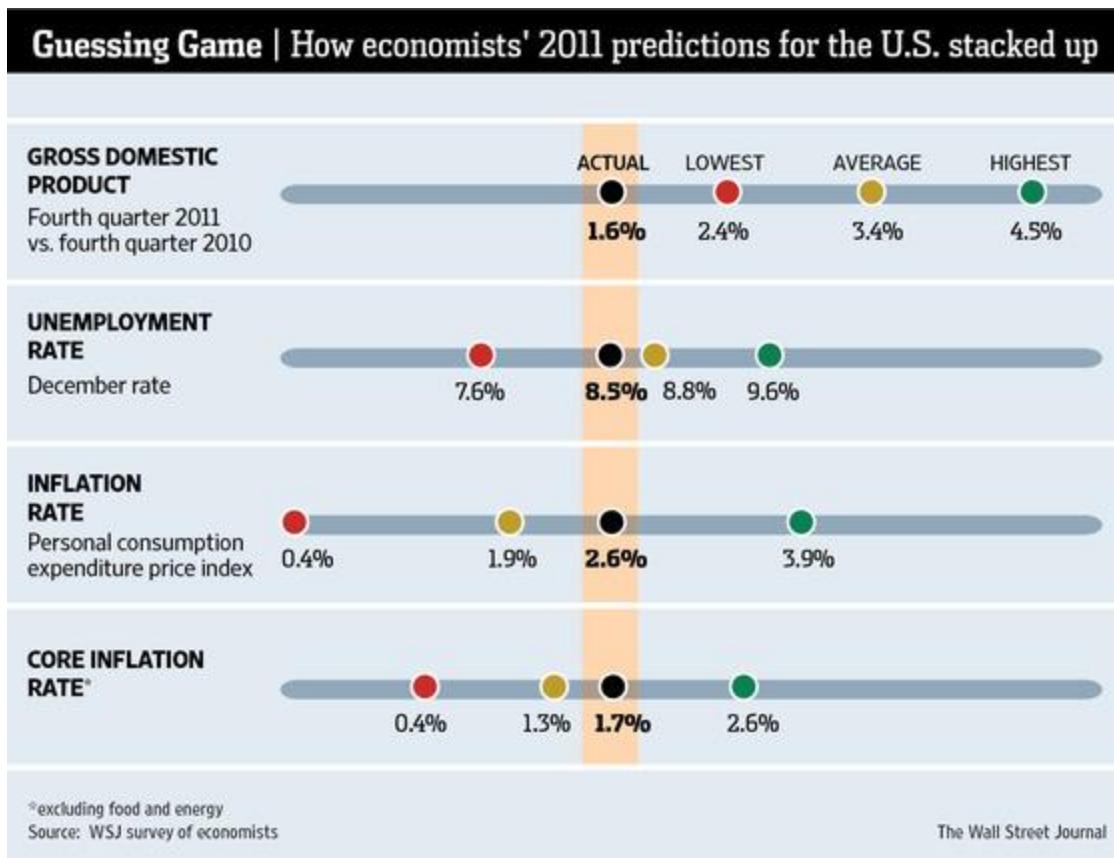
## *Loveland Employment levels moving up*

The chart shows how Loveland resident employment has changed since the beginning of 2006. The total number of residents employed peaked in October 2011. Due to seasonal factors, there are now fewer jobs, but as the chart shows, year end 2011 is close to 2008. A strong start in 2012 could help reach an all time high for Loveland residents in terms of the number employed.



# Forecasting Accuracy Tested in 2011

(Prognostications made in January 2011)



Source: *Wall Street Journal*, February 13, 2012.